

**LOCAL
GOVERNMENT LAW
AND
ADMINISTRATION**

VOLUME XII



LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

BY

THE RIGHT HONOURABLE THE
LORD MACMILLAN, G.C.V.O.
AND OTHER LAWYERS

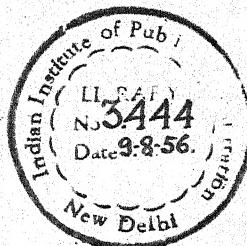
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VOLUME XII

ROAD TRAFFIC
to
SUMMARY PROCEEDINGS



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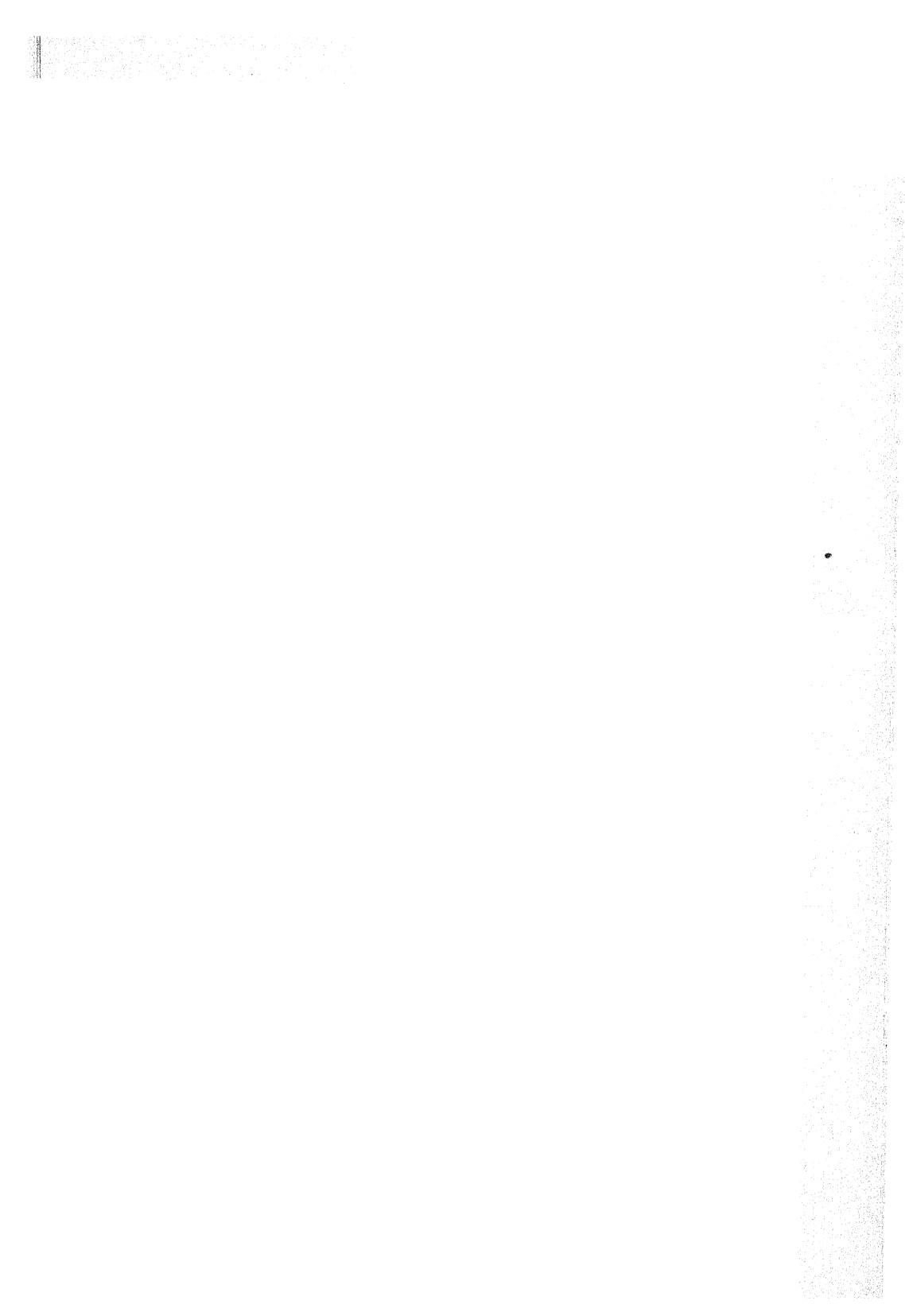
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THE ENGLISH AND EMPIRE DIGEST

In addition to the usual citation of the reports of cases in the footnotes, there will be found a reference to the volume, page, and case number at which the case appears in the Digest. Thus:

Manchester Overseers v. Ormskirk Union (1890), 24 Q. B. D.
678; 37 Digest 246, 406.

HALSBURY'S COMPLETE STATUTES OF ENGLAND

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The Local Government Act, 1933; 26 Halsbury's Statutes
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ROAD TRAFFIC

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See also titles :

BATH CHAIRS ;
BICYCLES ;
BREAKING UP ROADS ;
CATTLE ON HIGHWAY ;
HACKNEY CARRIAGES AND OMNIBUSES ;
HIGHWAY NUISANCES ;
LONDON ROADS AND TRAFFIC ;
MOTOR LICENCES ;
OBSTACLES ON HIGHWAY ;
OMNIBUSES OF LOCAL AUTHORITIES ;
PARKING PLACES ;

PUBLIC SERVICE VEHICLES ;
ROAD AMENITIES ;
ROAD GRANTS ;
ROAD MAKING AND IMPROVEMENT ;
ROAD SIGNS AND TRAFFIC SIGNALS ;
ROADS OR STREETS ;
TRAFFIC COMMISSIONERS ;
TRANSPORT, MINISTRY OF ;
TRUNK ROADS ;
UNREASONABLE AND EXCESSIVE USER OF HIGHWAYS.

INTRODUCTION

The increase in motor traffic since the beginning of this century has been so rapid that the roads of the country have become largely inadequate. In towns, in particular, the amount of traffic has been in many places entirely beyond the capacity of the streets. The result has been constant traffic blocks and delay. The United Kingdom, it has been calculated, has far more motor vehicles per mile of road than any other country (*a*). The number of people killed and injured in road accidents is a continued cause for concern by the authorities and the general public.

The whole problem of modern motor transport is of the very greatest importance. Any solution must be worked out from a national rather than a local point of view (*b*). The scope of local authorities in alleviating the position as a whole is very limited. This title outlines the present powers of the Minister of Transport and of local authorities to control and regulate traffic and also the general rules and regulations governing the use of vehicles on the highway.

The powers of local and other authorities over road traffic should be considered from two aspects. First there is the power of improving traffic facilities and making the roads safer for the existing traffic by planning new highways and improving existing highways. This is considered in the short note on road planning in this title and in greater detail in such titles as road amenities (*c*), road making and improvement (*d*) and trunk roads (*e*). Secondly, the statutory rules and regulations governing the control of traffic must be considered. At common law any member of the public is entitled to bring and use on the highway any vehicle he likes. This is subject to certain very limited restrictions (*f*). However, since the Highway Act, 1835 (*g*), a series of statutes have been passed regulating the use of the highway. The Road Traffic Acts, 1930-1937, and the regulations made under them contain a whole system of control, restriction and regulation of modern motor traffic (*h*). The remainder of this title is concerned with this control and regulation of traffic. The system of licensing goods vehicles by which the road haulage industry is controlled is dealt with in outline at the end of the title. [1]

PLANNING OF ROADS

New roads can be planned either by the M. of T. or by the highway authorities (*i*). Planning new major roads must obviously be a matter not for one isolated local authority but for the Minister or, at any rate, for a regional committee comprising a number of authorities acting

(*a*) According to the U.S. Department of Commerce in January, 1936, there were 11.2 vehicles per mile.

(*b*) This has often been recognised by Parliament, see title ROAD GRANTS and the Trunk Road Act, 1936; 29 Halsbury's Statutes 183; title TRUNK ROADS.

(*c*) See title ROAD AMENITIES.

(*d*) See title ROAD MAKING AND IMPROVEMENT.

(*e*) See title TRUNK ROADS.

(*f*) See titles HIGHWAY NUISANCES; DEDICATION AND ADOPTION OF HIGHWAYS.

(*g*) 9 Halsbury's Statutes 50.

(*h*) For a detailed consideration of the statutes and the statutory rules reference should be made to Mahaffy and Dodson's Road Traffic Acts and Orders, 2nd ed. (1936), and Supp.

(*i*) See titles ROAD MAKING AND IMPROVEMENT; HIGHWAY AUTHORITIES; TRUNK ROADS.

together (j). The planning of new roads is controlled, co-ordinated and to a certain extent, initiated by the Minister of Transport. His control is partly financial and partly through town planning and similar powers. A local authority is seldom able or willing to finance entirely from its own resources a major road improvement, so the system whereby the Treasury makes a grant towards the cost was introduced by the Development and Road Improvement Funds Act, 1909 (k). The present system is considered under the title ROAD GRANTS. For the other form of control over local authorities in regard to planning new roads, reference should be made to the titles TOWN AND COUNTRY PLANNING and TOWN PLANNING SCHEMES.

The M. of T., in addition to the general supervisory powers mentioned above, has direct powers of constructing and maintaining new roads for the purpose of facilitating traffic and, in particular, the main trunk roads have become the direct responsibility of the Minister (l).

To assist the M. of T. in his duties of co-ordinating and controlling transport facilities generally, the Road and Rail Traffic Act, 1933 (m), created a "Transport Advisory Council." This council contains representatives of all bodies and persons directly interested in transport problems, for example, local authorities, users of motor vehicles, pedestrians, cyclists, railways, etc. (n). The members of the council are appointed by the Minister. Its functions are purely consultative and advisory. It has no authority to give advice on any matter arising in the London and Home Counties area. In this area there is a separate advisory body known as the London and Home Counties Traffic Advisory Committee (o). [2]

TRAFFIC CONTROL

There are two forms of traffic control. First, the M. of T. or the local authority can make orders regulating or restricting traffic, for example, by declaring certain streets to be for one-way traffic only. This form of control is discretionary in the sense that the Minister or the authority can decide what rules shall apply in any particular area, and the rules can vary from place to place and sometimes are only of a temporary nature. Of course, in practice, the regulations follow a definite pattern. The various powers under which these rules and regulations can be made are considered under the heading "Regulation of Traffic." The other form of control is fixed, and uniform for the whole country and in general the local authorities have no power to modify or vary the regulations. This control is by the enforcement of the regulations contained in or made under the Road Traffic Acts, 1930-1937, and the various traffic offences under these and other statutes. These are considered under the headings "Traffic-Offences," "Construction and Use Regulations," "Speed Limits" and "Lighting Regulations." [3]

(j) See title REGIONAL PLANNING.

(k) 9 Halsbury's Statutes 207.

(l) See the Trunk Roads Act, 1936; 29 Halsbury's Statutes 183; title TRUNK ROADS.

(m) S. 46; 26 Halsbury's Statutes 910.

(n) For details, see the Second Schedule to the Road and Rail Traffic Act, 1933, and p. 287 of Mahaffy and Dodson's Road Traffic Acts and Orders, 2nd ed. (1936); and Supp.

(o) See title LONDON ROADS AND TRAFFIC.

REGULATION OF TRAFFIC

(i) **Powers of the M. of T.**—Under sect. 29 (1) of the Road and Rail Traffic Act, 1933 (*p*), the M. of T., after consultation with the Traffic Advisory Council (*q*) can make orders prohibiting or restricting the driving of vehicles on roads of a specified class. For the purpose of an order the Minister can divide roads into classes, and can decide into which class any particular road may fall. It is not necessary for the Minister to consult the highway authorities, but the approval of both Houses of Parliament is required before an order becomes effective. An order under this power can apply restrictions to specified classes or descriptions of vehicles, such as vehicles used for particular purposes or over a specified weight (*r*).

The Highway Code.—Under sect. 45 of the Road Traffic Act, 1930 (*s*), the M. of T. was required to issue a code of rules for the guidance of all persons using roads. A code known as the Highway Code was issued in 1935 (*t*). Fresh editions can be issued by the Minister from time to time as he thinks fit. Every edition must be authorised by a resolution of both Houses of Parliament before it becomes effective. The provisions of the Highway Code are not directly enforceable because failure to observe the rules in it does not involve civil or criminal penalties. However, it may within certain limits be relied on in civil or criminal proceedings to establish negligence (*u*). [4]

(ii) **Powers of Local Authorities.** (a) *General Powers*.—By virtue of sect. 29 of the Road and Rail Traffic Act, 1933 (*x*), the power previously exerciseable by the M. of T. on the application of a local authority under sect. 46 of the Road Traffic Act, 1930 (*a*), is now exerciseable by the local authorities without previous reference to the Minister, but confirmation of any order so made is required before it becomes operative (*b*).

(1) **Extent of the Powers.**—Under this power a local authority coming within the scope of the section can make orders prohibiting or restricting the driving of vehicles or any specified class of vehicles on any specified road in its area. The order may be subject to such exceptions or conditions as to occasional user or otherwise as the authority thinks fit. Before making an order the council must satisfy itself that the vehicles prohibited or restricted cannot be used at all, or unless subject to the restriction, on the road to which the order relates, without causing danger to the vehicles or to passengers or to other persons using the road. It will be sufficient if the local authority considers the road unsuitable for use by the vehicles to which the order relates without the restrictions imposed by the order (*c*). [5]

The local authority can also make orders for any of the following purposes :

(a) the specification of routes to be followed by vehicles ;

(*p*) 26 Halsbury's Statutes 894.

(*q*) See *ante*, p. 3.

(*r*) Failure to comply with an order is an offence punishable on first conviction with a fine not exceeding five pounds, on a second or subsequent conviction not exceeding ten pounds.

(*s*) 23 Halsbury's Statutes 643.

(*t*) The Highway Code is printed on p. 759 of Mahaffy and Dodson's Road Traffic Acts and Orders, 2nd ed. (1936).

(*u*) See *Joseph Etca, Ltd. v. Reeves*, [1938] 2 K. B. 832, C. A.; Digest Supp.

(*x*) 26 Halsbury's Statutes 894.

(*a*) 23 Halsbury's Statutes 643.

(*b*) See para. (3), *Procedure, post*, p. 5.

(*c*) Road Traffic Act, 1930, s. 46 (1); 23 Halsbury's Statutes 643.

- (b) the prohibition or restriction of the use of specified roads by vehicles of any specified class or description either generally or during particular hours;
- (c) making specified roads one-way streets;
- (d) otherwise in relation to the regulation of traffic (d).

No order can be made which would have the effect of preventing reasonable access for vehicles of all descriptions to any premises on or near the road. This is an important safeguard to the rights of frontagers (e). [6]

(2) Local Authorities entitled to Exercise the Powers.—The councils entitled to exercise the powers under this section are the councils of counties or county boroughs and also the councils of urban districts having a population of over 20,000 according to the last census for the time being. In London the relevant authority is the metropolitan borough council and the Common Council of the City of London (f). [7]

(3) Procedure.—In the first place no order made by a local authority under this power becomes effective until confirmed by the Minister of Transport. The Minister can make modifications to an order before confirming it. Either the Minister after giving notice to the council, who has made an order, or the council itself, subject to the Minister's confirmation, can revoke or vary an order (g).

The procedure to be followed by a council making and obtaining confirmation of an order is set out in the Regulation and Restriction of Road Traffic (Procedure) Provisional Regulations, 1934 (h), made under sect. 29 of the Road and Rail Traffic Act, 1933 (i). The first step is for the council to pass a resolution making the order in the ordinary way after due notice has been given. An application must then be made to the Minister for confirmation of the order. The application need not be in any prescribed form, but must be accompanied by (1) three copies of the order, one of which copies must be duly signed and sealed; (2) a map showing the roads affected by the order and also indicating alternative routes; (3) two copies of the notice which has to be published.

A notice of the making of the order in a prescribed form annexed to the rules, and stating that objections to the confirmation of the order should be sent to the Minister within a certain time, must be published by the council once at least in two consecutive weeks, in some local newspaper circulating in the district in which the roads affected by the order are situate. The first notice must appear not later than twenty-one days after the application to the Minister (k).

The Minister may decide that before confirming the order there ought to be a public inquiry. There is no right for the local authority or any person objecting to the order to demand an inquiry. If the Minister decides that a public inquiry should be held he will notify the authority and the authority must then publish a notice of the inquiry once at least in two consecutive weeks in a local newspaper and once

(d) Road Traffic Act, 1930, s. 46 (2); 23 Halsbury's Statutes 644.

(e) The extent of frontagers' rights was carefully considered by the House of Lords in the important case of *Marshall v. Blackpool Corp.*, [1935] A. C. 16; Digest (Supp.).

(f) Road Traffic Act, 1930, s. 46 (8), (9); 23 Halsbury's Statutes 644, 645.

(g) Road and Rail Traffic Act, 1933, s. 29 (4); 26 Halsbury's Statutes 895.

(h) Provisional Regulations and Orders, February 16, 1934, see p. 552 of Mahaffy and Dodson's Road Traffic Acts and Orders, 2nd ed. (1936).

(i) 26 Halsbury's Statutes 894.

(k) If the council represent to the Minister that a public inquiry should be held and he decides to hold an inquiry this notice can be dispensed with.

in the *London Gazette* (*l*). The form of notice is set out in the rules. The council must also have copies of the notice printed and posted at each end of the roads affected and in such other manner as may be desirable for giving publicity to the notice.

The public inquiry will be held by an official from the M. of T. All persons interested may appear at the inquiry either in person or by counsel, agent or solicitor. Unless the person holding the inquiry gives permission, no person is entitled to be heard unless notice of his desire has been given to the Minister in accordance with the advertised notice. The person holding the inquiry has power to refuse to hear any person if he considers that the views of that person have been adequately stated at the inquiry by some other person. The official from the Ministry reports back on the inquiry, and in due course the Minister gives his decision whether or not he will confirm the order. In any case the Minister must not confirm an order until twenty-eight days have expired since the order was made, and the Minister must consider any objections which have been made (*m*).

When an order has been confirmed, a notice in a form approved by the Minister must be published in the same manner as the notice of the making of the order and such notices as may be approved by the Minister must be erected on or near the roads affected in positions similarly approved. The order must be available for inspection at all reasonable hours at the office of the council. [8]

(b) *Closing Roads for Repair*.—Where a road is under repair or reconstruction, the highway authority may make an order restricting or prohibiting the use of the road by vehicles either generally or of a particular class and subject to such conditions or exceptions as the authority may think fit (*n*). When considering the question of making an order the highway authority must have regard to the existence of alternative routes for traffic and not less than seven days before making the order, the authority must publish a notice of their intention to make the order in one or more newspapers circulating in the district in which the road is situate. A second notice must be advertised in the same way within seven days after the order is made (*o*). The advertised notice must state the effect of the order and the alternative routes available for traffic. While an order is in force a notice stating the effect of the order and describing the alternative routes must be kept posted in a conspicuous manner at each end of the part of the road affected and at the points at which it will be necessary for vehicles to diverge from the road (*p*).

An order under this power does not require to be confirmed by the Minister of Transport, but any person aggrieved by any restriction or prohibition imposed by an order can appeal to the Minister. The Minister can either quash the restriction or prohibition or confirm it with or without modifications (*q*). The Minister's decision is final and conclusive (*r*).

(*l*) Publication in the *Gazette* is not necessary where the order is made for the special purposes numbered (a) to (d), *ante*, pp. 4, 5.

(*m*) Road and Rail Traffic Act, 1933, s. 29 (5); 26 Halsbury's Statutes 895.

(*n*) Road Traffic Act, 1930, s. 47 (1); 23 Halsbury's Statutes 645.

(*o*) *Ibid.*, s. 47 (2).

(*p*) *Ibid.*, s. 47 (5).

(*q*) What may or may not amount to a "modification" is sometimes a point of difficulty; see, for example, *R. v. Minister of Health, ex parte Purfleet U.D.C.* (1934), 98 J. P. 427, C. A.; affirmed (1935), 99 J. P. 418, H. L.; Digest (Supp.).

(*r*) Road Traffic Act, 1930, s. 47 (8); 23 Halsbury's Statutes 646.

An order under this power can continue in force for not longer than three months. With the consent of the Minister an order can be made continuing in force after the three months (s). [9]

(c) *Summary Power to Close Roads.*—Where there appears to be a likelihood of danger to the public or of serious damage to the highway, a highway authority can at any time temporarily restrict or prohibit the use of any road by vehicles generally or by any particular class or description of vehicle (t). It is not necessary for the highway authority to make an order; it is sufficient to issue a notice which must be kept posted in a conspicuous manner at each end of the part of the road to which the prohibition or restriction applies, and also at the points where it is necessary for traffic to diverge for alternative routes. The notice should state the alternative routes. The restriction or prohibition remains in force for only seven days. An order under the power set out above, applicable in the case of repairs or reconstruction, can be made before the end of the seven days. In this case it is not necessary to wait seven days for the advertisement of the intention to make the order. The provisions for an appeal to the M. of T. by any person aggrieved in the case of closing a road for repair apply also in this case (u). [10]

(d) *Traffic Signs.*—Highway authorities have certain powers to erect traffic signs subject to the general or other directions of the Minister. Disregard for traffic signs is an offence (a) [11]

(e) *London Traffic.*—In the London Traffic Area special powers of regulating traffic exist (b). [12]

(f) *Miscellaneous Powers.*—Certain earlier powers still exist whereby local authorities can regulate and control traffic. Under the Town Police Clauses Act, 1847 (c), an urban authority or a rural authority possessing the necessary urban powers (d) can make orders for the route to be observed by carts, carriages, horses and persons, and for preventing obstruction of the streets in its district at times of public processions or when the streets are liable to be crowded or obstructed. It can also give directions to the police to prevent obstruction at theatres or places of resort. It can make orders to regulate traffic on Sundays outside places of worship on application of the minister or churchwardens. [13]

Under the P.H.A. Amendment Act, 1907 (e), where the section is in force, the local authority may by order prescribe the streets in which the driving of animals shall be permitted in the district. An order under this power operates only between 9 a.m. and 9 p.m., and cannot prevent animals being driven to or from the owner's premises or to any licensed slaughterhouse. [14]

Under the Highways and Locomotives (Amendment) Act, 1878 (f), and the L.G.A., 1888 (g), a county or county borough council can make

(s) Road Traffic Act, 1980, s. 47 (4); 23 Halsbury's Statutes 645.

(t) *Ibid.*, s. 47 (6); *ibid.*, 645.

(u) Any person contravening any restriction or prohibition under this or the last-mentioned power is liable to a fine not exceeding £5 for the first conviction and not exceeding £10 for a second or subsequent conviction; Road Traffic Act, 1980, s. 47 (7); 23 Halsbury's Statutes 646.

(a) See the title ROAD SIGNS AND TRAFFIC SIGNALS.

(b) See the title LONDON ROADS AND TRAFFIC.

(c) S. 21; 19 Halsbury's Statutes 36.

(d) See the P.H.A., 1875, ss. 171, 276; 13 Halsbury's Statutes 696, 741.

(e) S. 80; 13 Halsbury's Statutes 940.

(f) Ss. 26, 38; 9 Halsbury's Statutes 181, 185.

(g) Ss. 3 (viii.), 34; 10 Halsbury's Statutes 689, 711.

bye-laws prohibiting and regulating the use of wagons, carts or carriages drawn by animal power unless the wheels and tyres are constructed in certain ways. Bye-laws can also be made under this power prohibiting or regulating gates across highways or gates opening outwards on highways. [15]

Under the P.H.A., 1936 (h), the council of a borough or urban or rural district may make bye-laws prescribing the times for the carriage through the streets of any faecal, offensive or noxious matter or liquid, for providing proper carts or receptacles and for compelling the cleansing of any place where any such matter or liquid may have been spilt. [16]

(iii) **Powers of the Police.**—Under the Fire Brigades Act, 1938 (i), the senior officer of police present at any fire may close for traffic any street or may regulate traffic in any street if he considers it necessary or desirable to do so for the purpose of extinguishing fire or for the safety or protection of life or property.

Under the Road Traffic Act, 1930 (j), any police constable in uniform engaged in the regulation of traffic can give directions to drivers of vehicles to stop or to proceed in or keep to a particular line of traffic, or otherwise regulate the traffic, and failure to comply with any direction is an offence punishable under the Act. [17]

TRAFFIC OFFENCES (k)

There is no clear distinction between traffic offences and highway nuisances and offences (l). Under sect. 72 of the Highway Act, 1835 (m), it is an offence (*inter alia*) wilfully (n) to ride or drive any horse, cattle or carriage upon any footpath or causeway set apart for the use of foot passengers. Sect. 78 of the same Act (o) contains a considerable number of offences in connection with traffic on the highway including causing by negligence or wilful misbehaviour, hurt or damage to any person, horse or goods conveyed in any carriage along a road; failing when meeting another carriage (p) to keep to the left side of the road; preventing others passing; furious driving or riding such as endangers life or limb of any passenger and many others (q). There is a more serious misdemeanor under the offences against the Person Act, 1861 (r), for a person in charge of a vehicle by

(h) S. 82 (1); 29 Halsbury's Statutes 387.

(i) S. 14 (4); 31 Halsbury's Statutes 596.

(j) S. 49; 23 Halsbury's Statutes 647, as amended by Road Traffic Act, 1934, Sched. III.; 27 Halsbury's Statutes 569.

(k) For speed limit offences, *see post*, p. 21.

(l) Reference should be made to the titles CATTLE ON THE HIGHWAY and HIGHWAY NUISANCES: for details of the common law misdemeanor of public nuisance and many other statutory offences in connection with the use of the highway.

(m) 9 Halsbury's Statutes 86.

(n) *I.e.* knowing what he is about. No element of evil intention is needed to constitute the offence, *see Fearnley v. Ormsby* (1879), 4 C. P. D. 186; 26 Digest 416, 1345; *Gully v. Smith* (1883), 53 L. J. (M. C.) 35; 26 Digest 416, 1346; and *Hudson v. Bray*, [1917] 1 K. B. 520; 26 Digest 416, 1349.

(o) 9 Halsbury's Statutes, 91.

(p) "Carriage" includes any motor vehicle or trailer; Road Traffic Act, 1930, s. 81; 23 Halsbury's Statutes 635; and cycles; L.G.A., 1888, s. 85 (1); 10 Halsbury's Statutes 756.

(q) For further details of these and offences under the Town Police Clauses Act, 1847, s. 28; 19 Halsbury's Statutes 38, *see title HIGHWAY NUISANCES*. The maximum penalties under this Act and under the Highway Acts are so small, *i.e.* 40s. fine or fourteen days' imprisonment, that prosecutions now are rare, especially when the Road Traffic Acts apply.

(r) S. 85; 4 Halsbury's Statutes 610.

wanton or furious driving or racing, or other wilful misconduct, or wilful neglect, to do or cause to be done any bodily harm to any person. The maximum sentence is two years' imprisonment with or without hard labour. [18]

Offences under the Road Traffic Acts, 1930-1937.—It must be remembered that the code of regulations under the Road Traffic Acts, 1930-1937, does not supersede the earlier common law and statutory offences and it is still possible for a person to be charged with one or other of these offences (s). In the case of horse-drawn vehicles the only possible prosecution is under the earlier statutes, because as a rule the Road Traffic Acts apply only to motor vehicles. The following are some of the more important offences under these Acts :

(a) *Reckless or Dangerous Driving.*—Any person who drives a motor vehicle on a road recklessly or at a speed or in a manner dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of the traffic which is actually on the road at the time or which might reasonably be expected to be on the road, is guilty of an offence for which on indictment the maximum penalty is imprisonment for two years with or without hard labour and a fine (t). [19]

(b) *Careless Driving.*—It is an offence for a person to drive a motor vehicle without due care and attention or to drive without reasonable consideration for other persons using the road (u). The penalty for this offence is on conviction for a first offence a fine not exceeding £20, and for a second or subsequent offence a fine not exceeding £50 or imprisonment for a term not exceeding three months (a). [20]

(c) *Racing on Highways.*—To promote or take part in a race or trial of speed between motor vehicles on a public highway is an offence (b). [21]

(d) *Driving Off the Highway.*—It is an offence if a person drives a motor vehicle without lawful authority on to any common land, moor land or any other land not part of the highway or on to any footpath or bridleway. It is, however, not an offence to drive on land within fifteen yards of a road for the purpose of parking or if the vehicle was driven off the road for the purpose of meeting some emergency such as saving life or extinguishing fire (c). [22]

(e) *Driving while under the Influence of Drink or Drugs.*—It is a serious offence for a person when driving or attempting to drive or when

(s) But see Interpretation Act, 1889, s. 33; 18 Halsbury's Statutes 1004.

(t) Road Traffic Act, 1930, s. 11; 23 Halsbury's Statutes 620, as amended and extended by Road Traffic Act, 1934, ss. 4, 34, 35; 27 Halsbury's Statutes 539, 561. No danger actually incurred need be proved, so long as the court is satisfied that a danger was likely to occur (*Kingman v. Seager*, [1938] 1 K. B. 397; Digest Supp.). For the correct form of indictment for this offence, see *R. v. Surrey Justices, ex parte Witherick*, [1932] 1 K. B. 450; Digest (Supp.).

(u) Road Traffic Act, 1930, s. 12; 23 Halsbury's Statutes 621, as extended by Road Traffic Act, 1934, s. 35; 27 Halsbury's Statutes 561. For a distinction between this offence and reckless driving, see *R. v. Surrey Justices (supra)*.

(a) Road Traffic Act, 1930, s. 113; 23 Halsbury's Statutes 688.

(b) *Ibid.*, s. 18; *ibid.*, 622. The maximum penalty is imprisonment for three months and a fine not exceeding £50.

(c) *Ibid.*, s. 14; *ibid.*, 622. The maximum penalty is for a first offence a fine of £5; on a second or subsequent offence £10. Driving on to a common may, apart from this provision, be a breach of the provisions of the Law of Property Act, 1925, s. 193; 15 Halsbury's Statutes 371, or of bye-laws, and, of course, the provision for parking within 15 yards of a road does not excuse the person so doing from any civil proceedings.

in charge of a motor vehicle on a road or other public place, to be under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle (d). The maximum penalty on indictment is imprisonment for six months and a fine. To constitute this offence it is not necessary that the person charged should actually be drunk, if he could not have controlled the car properly. He need not be driving or even attempting to drive (e). A police constable can arrest without a warrant for this offence. [23]

(f) *Miscellaneous Offences.*—It is not possible to give an exhaustive list of all the various offences under the Acts; the following are some of the more important offences.

(1) If an accident occurs owing to the presence of a motor vehicle on a road whereby damage or injury is caused to any person, vehicle or animal, the driver is guilty of an offence unless he stops and, if required, gives his name and address, the name and address of the owner of the car and the identification marks of the car (f). If he does not give his name and address to any person reasonably requiring them, he must report the accident at a police station or to a police constable as soon as possible after the accident and at any rate within twenty-four hours. The driver must also, in the case of an accident causing personal injury to another, produce his certificate of insurance to a police constable or to some other person having reasonable grounds to require production. If this is not done at the time of the accident he must produce the certificate of insurance at a police station or to a police constable within twenty-four hours (g). [24]

(2) Any person who disregards a traffic sign or a direction of a constable in control of traffic (h), or who fails to stop when required by a constable in uniform is guilty of an offence (i). [25]

(3) Failure to comply with the regulations concerning pedestrian crossings is an offence (k). [26]

(4) Failure to insure against third party risks in accordance with the regulations in Part II. of the Road Traffic Act, 1930 (l), as amended by sect. 33 of the Road and Rail Traffic Act, 1933 (m), and Part II. of the Road Traffic Act, 1934 (n), is an offence. [27]

(5) Not complying with the regulations for the construction and use of motor vehicles made by the M. of T. under the powers in the Road Traffic Acts is an offence (o). [28]

(6) Driving without a driving licence (p) or an excise licence (q),

(d) Road Traffic Act, 1930, s. 15 ; 23 Halsbury's Statutes 622.

(e) *R. v. Hawkes* (1931), 22 Cr. App. Rep. 172 ; Digest Supp.

(f) Road Traffic Act, 1930, s. 22 ; 23 Halsbury's Statutes 627.

(g) *Ibid.*, s. 40 ; *ibid.*, 640.

(h) *Ibid.*, s. 49 ; *ibid.*, 647, as amended by Road Traffic Act, 1934, Sched. III. ; 27 Halsbury's Statutes 569. White lines placed on a road by a local authority are not "traffic signs" (*Evans v. Cross* (1938), 102 J. P. 74 ; Digest (Supp.)). See also title ROAD SIGNS AND TRAFFIC SIGNALS.

(i) 23 Halsbury's Statutes 626.

(k) Road Traffic Act, 1934, s. 18 (8) ; 27 Halsbury's Statutes 550, and see title ROAD AMENITIES.

(l) 23 Halsbury's Statutes 636—642.

(m) 26 Halsbury's Statutes 898.

(n) 27 Halsbury's Statutes 544—549.

(o) Road Traffic Act, 1930, s. 3 (3) ; 23 Halsbury's Statutes 610.

(p) *Ibid.*, s. 4 ; *ibid.*, 611, as extended by Road Traffic Act, 1934, s. 31 (1) ; 27 Halsbury's Statutes 557, and amended by Road Traffic (Driving) Licences Act, 1936, s. 1 ; 29 Halsbury's Statutes 813.

(q) See title MOTOR LICENCES.

exceeding speed limits (*r*), leaving vehicles in dangerous positions on roads (*s*), driving by a person under sixteen (*t*), failure to have proper lights on a vehicle (*u*) are all offences. [29]

Notice of Prosecution.—In the case of a prosecution for exceeding a speed limit, or for reckless, dangerous or careless driving, under the provisions of Part I. of the Road Traffic Act, 1930 (*a*), there can be no conviction unless either (a) the person charged was warned at the time the offence was committed that the question of a prosecution would be taken into consideration, or (b) within fourteen days of the commission of the offence a summons was served on him or within the said fourteen days a notice of the intended prosecution stating the nature of the offence, the time and place where it was committed, was served on or sent by registered post to the person charged or the registered owner of the vehicle at the time of the offence. This provision does not prevent a conviction where the court is satisfied that neither the name and address of the accused, nor of the registered owner of the vehicle, could with reasonable diligence have been ascertained in time for the summons or the notice of prosecution to have been served within the fourteen days, nor where the accused by his own conduct contributed to the failure to comply with the provisions. The onus is on the person charged to prove that the provisions were not complied with (*b*). [30]

Disqualification for Offences and Endorsement of Convictions.—In the case of a second or subsequent conviction for reckless or dangerous driving, of a first conviction for motor racing on the highway or for driving when under the influence of drink, the court convicting must, unless there are special reasons to the contrary, order the offender to be disqualified for holding or obtaining a licence for such period as the court thinks fit. In the case of conviction for driving while under the influence of drink the disqualification shall be for twelve months at least. On a first conviction for reckless or dangerous driving or for careless driving, and on a third or subsequent conviction for exceeding a speed limit, and on a conviction for other offences under the Acts, the court has a discretion to order disqualification (*c*).

Disqualification cannot be ordered on a first or second conviction for exceeding a speed limit (*d*). On a first conviction for careless driving the court can only order disqualification for one month, and on a second conviction for three months (*e*). For the purpose of this provision a conviction for reckless or dangerous driving within three years of the conviction counts as if it had been a conviction for careless driving. There are provisions for appealing against an order for disqualification, and after six months from a disqualification order, the person convicted can apply for the removal of the order to the court which convicted him. The court has a discretion to grant or refuse the removal of the disqualification (*f*).

(*r*) See *infra*.

(*s*) Road Traffic Act, 1930, s. 50; 23 Halsbury's Statutes 647.

(*t*) *Ibid.*, s. 9; *ibid.*, 618.

(*u*) See *post*, p. 22.

(*a*) 23 Halsbury's Statutes 607—636.

(*b*) Road Traffic Act, 1930, s. 21; 23 Halsbury's Statutes 626.

(*c*) *Ibid.*, s. 6; *ibid.*, 614.

(*d*) Road Traffic Act, 1934, s. 2 (3); 27 Halsbury's Statutes 538.

(*e*) *Ibid.*, s. 5 (2); *ibid.*, 539.

(*f*) Road Traffic Act, 1930, s. 7 (3); 23 Halsbury's Statutes 615.

Where a person is convicted of any criminal offence in connection with the driving of a motor vehicle (not being an offence in connection with the regulation of public service vehicles), the court may order that particulars of the conviction shall be endorsed on the licence of the offender. An order for the endorsement of the licence must be made in certain cases, namely where a disqualification order has been made or where the conviction is for reckless or dangerous driving or for driving while under the influence of drink (g). An endorsement is ordinarily carried forward when the offender's licence is renewed or a new licence issued, but if the offender during a continuous period of three years after the conviction has had no further order made against him or no further order other than an order made more than one year before the application for a new licence and in respect of a conviction for exceeding a speed limit, a new licence can be issued free from any endorsement. A new licence free from endorsement can also be issued where the conviction was for exceeding a speed limit, the offender's licence had no endorsements at the time of the conviction and no further order for endorsement has been made against him for a continuous period of one year (h). [31]

CLASSIFICATION OF ROAD VEHICLES

A number of classifications of road vehicles exist for various purposes. For the purposes of excise licences there is a classification in the Second Schedule of the Finance Act, 1920, as amended (i). Vehicles are classified for the purposes of speed limits (k). Here we are concerned with the ensuing classification for the purposes of and the regulations made under the Road Traffic Act, 1930 (l).

- (a) Heavy locomotives.—Mechanically propelled vehicles not constructed to carry a load (except water, fuel, equipment, etc.), weighing more than $11\frac{1}{2}$ tons unladen.
- (b) Light locomotives.—Vehicles of the same type weighing not more than $11\frac{1}{2}$ tons, but more than $7\frac{1}{2}$ tons unladen.
- (c) Motor tractors.—Similar vehicles weighing not more than $7\frac{1}{4}$ tons unladen.
- (d) Heavy motor cars.—Mechanically propelled vehicles (not coming within (e)) constructed to carry a load or passengers, and weighing more than $2\frac{1}{2}$ tons unladen.
- (e) Motor cars.—Mechanically propelled vehicles (not coming within (f) or (g)) constructed to carry a load or passengers. The weight unladen must not exceed $2\frac{1}{2}$ tons, unless the vehicle is constructed solely for the carriage of not more than seven passengers and their effects, excluding the driver, and has pneumatic tyres (m), in which case the unladen weight can be as much as 3 tons.
- (f) Motor cycles.—Mechanically propelled vehicles (not coming within (g)) with less than four wheels and weighing not more than 8 cwt. (n).

(g) Road Traffic Act, 1930, s. 6 (1); 23 Halsbury's Statutes 614.

(h) Road Traffic Act, 1934, s. 5 (3); 27 Halsbury's Statutes 540.

(i) See title MOTOR LICENCES.

(k) See post, p. 18.

(l) S. 2; 23 Halsbury's Statutes 608.

(m) See post, p. 17.

(n) A sidecar attached to a motor cycle, if complying with the prescribed conditions, is regarded as forming part of the motor cycle and not as a trailer; Road Traffic Act, 1930, s. 2 (4); 23 Halsbury's Statutes 610.

(g) Invalid carriages.—Mechanically propelled vehicles not weighing more than 5 cwt., constructed (and not merely adapted) for the sole use of persons suffering from some physical defect or disability.

The M. of T. is empowered to make regulations sub-dividing any of the classes either according to weight, construction, tyres, use or otherwise, and making different provision with respect to each subdivision, and varying as respects any class the maximum or minimum weight (o). [32]

CONSTRUCTION AND USE REGULATIONS

The M. of T. may make regulations (p) as to the use of motor vehicles and trailers on roads, their construction and equipment and the conditions under which they may be used and otherwise, and in particular may make regulations with respect to any of the following :

- (a) the width, height and length of motor vehicles and trailers and the load carried, the diameter of the wheels, the width, nature and condition of tyres ;
- (b) the consumption of smoke ;
- (c) excessive noise ;
- (d) the maximum weights of motor vehicles of the various categories ;
- (e) the particulars to be marked on motor vehicles ;
- (f) towing and drawing of vehicles by motor vehicles ;
- (g) the number and nature of brakes and the provision that silencers, steering gear and brakes shall be in proper working order, and for the testing and inspecting of brakes, silencers and steering gears ;
- (h) signalling appliances ;
- (i) licences.

Regulations have been made from time to time covering all the matters mentioned above. The regulations are constantly being amended and extended so as to bring modern motor vehicles up to a very high standard of constructional efficiency. Where any regulation is made after the passing of the Act (q) varying the requirements as regards the construction or weight of any vehicle, provision must be made for exempting for a period of at least five years any vehicle registered within one year of the making of the regulation (r).

The M. of T. may by order authorise subject to any conditions or restrictions he may think fit, the use on roads of special types of motor vehicles or trailers which are constructed either for special purposes or for tests or trials, and new types of motor vehicles and trailers whether wheeled or wheel-less (s). This power has been exercised by the Motor Vehicles (Authorisation of Special Types) Order (No. 1), 1937, and the Motor Vehicles (Authorisation of Special Types) Order, 1938 (t).

(o) Road Traffic Act, 1930, s. 2 (2) ; 23 Halsbury's Statutes 609.

(p) Under *ibid.*, s. 30; *ibid.*, 633, as extended by Road Traffic Act, 1934, s. 9 ; 27 Halsbury's Statutes 543. For the regulations, see 23 Halsbury's Statutes 720, the annual continuation volumes and supplement, also Mahaffy and Dodson's Road Traffic Acts and Orders, 2nd ed. (1936); and Supp.

(q) August 1, 1930.

(r) Road Traffic Act, 1930, s. 3 (1) (a) ; 23 Halsbury's Statutes 610.

(s) *Ibid.*, s. 3 (1) (b) ; *ibid.*, 610.

(t) S.R. & O., 1937, No. 442, and 1938, No. 567, Mahaffy and Dodson's Road

The Construction and Use Regulations (*u*) contain very detailed provisions, and it is only possible to give here an outline of some of the more important regulations. The regulations have varying requirements for the different types of vehicle in accordance with the classification set out above. For further details reference should be made to the regulations themselves. [33]

(i.) **Maximum Overall Length** (*a*).—(a) The maximum overall length of a four-wheeled vehicle is 27 ft. 6 in.

(b) The maximum overall length of a vehicle having more than four wheels is 30 ft.

(c) The maximum overall length of an articulated vehicle (*b*) is 33 ft. except that where an eight-wheeled articulated vehicle was registered before January 1, 1931, the maximum overall length may be 36 ft., and there is no maximum length for articulated vehicles constructed to carry indivisible loads if they have pneumatic tyres on all wheels and are not driven over 12 m.p.h.

(d) For trailers the maximum length is 22 ft., subject to the same exceptions as in the case of articulated vehicles. [34]

(ii.) **Maximum Overall Width** (*c*).—The maximum overall widths are :

(a) for locomotives 9 ft. ;

(b) for motor tractors, heavy motor cars and motor cars used as public service vehicles 7 ft. 6 in., for other motor cars 7 ft. 2 in. ;

(c) for trailers 7 ft. 6 in., subject to certain exceptions (*d*). [35]

(iii.) **Springs**.—Every motor vehicle and every trailer must be equipped with suitable and sufficient springs between each wheel and the frame of the wheel. There are exceptions in the case of vehicles first registered before January 1, 1932, motor tractors not weighing more than 4 tons if the unsprung wheels have pneumatic tyres, land locomotives and agricultural tractors, motor cycles and a few other special vehicles (*e*). [36]

(iv.) **Brakes**.—All vehicles except motor cycles, invalid carriages and land locomotives must have adequate parking brakes affecting at least two wheels of the vehicle when it is left unattended (*f*).

Traffic Acts and Orders Supplement, 1939, p. 137 *et seq.*; see also the Motor Vehicles (Authorisation of Special Types) Order, 1939, S.R. & O., 1939, No. 139.

(*u*) Motor Vehicles (Construction and Use) Regulations, 1937, S.R. & O., 1937, No. 229; Motor Vehicles (Construction and Use) (Track-laying Vehicles) Provisional Regulations, 1937, dated May 10, 1937, and Motor Vehicles (Construction and Use) (Amendment) Provisional Regulations, 1937, dated September 29, 1937; 30 Halsbury's Statutes 833, 874, 891.

(*a*) This is defined as the length of a vehicle between parallel planes passing through the extreme projecting points, excluding among other things, the starting handle and the hood when down; see 1937 Regulations, para. 3; 30 Halsbury's Statutes 834.

(*b*) An articulated vehicle is a heavy motor car or a motor car with a trailer so attached that a part of the trailer is superimposed on the motor car, and when the trailer is uniformly loaded not less than 20 per cent. of the weight of the load is carried by the motor car: see Regulation 3, *supra*.

(*c*) This means the width measured between parallel planes passing through the extreme projecting points of the vehicle, excluding the driving mirror and the traffic indicator. Where a vehicle was first registered before January 2, 1939, a swivelling window, if not extending for more than four inches, is excluded.

(*d*) 1937 Regulations, para. 49; 30 Halsbury's Statutes 848.

(*e*) *Ibid.*, para. 8; *ibid.*, 836.

(*f*) *Ibid.*, para. 9; *ibid.*, 837.

The requirements of the regulations regarding the braking systems on the various categories of vehicle are very detailed and technical. It is not possible to set out the provisions in detail. It can be said generally that every motor vehicle must be equipped with an efficient braking system or systems having two means of operation, so designed and constructed that, notwithstanding the failure of any part (other than a fixed member or a brake shoe anchor pin) through or by means of which the force necessary to apply the brakes is transmitted, there shall still be available for application by the driver to not less than half the wheels of the vehicle, brakes sufficient under the most adverse conditions to bring the vehicle to rest within a reasonable distance (g).

In the case of motor tractors, heavy motor cars (except steam vehicles not used as public service vehicles) and motor cars registered on or after April 1, 1938, and all such vehicles as from October 1, 1943 (h), no braking system may be rendered ineffective by the non-rotation of the engine. One of the means of operation must be capable of causing the brakes to be applied directly to not less than half the number of wheels. Where a motor car has four or more wheels and any brake shoe is capable of being applied by more than one of the methods of operation, all the wheels must be fitted with brakes operated by one of the means of operation. It is obligatory to maintain in good and efficient working order and properly adjusted every part of the braking system (i). The regulations contain an express power for any police constable in uniform or any certifying officer, public service vehicle examiner or examiner under the Road and Rail Traffic Act, 1933 (j), to test and inspect either on a road or subject to the consent of the owner of any premises, on any premises where the vehicle is, the brakes, silencers and steering gear. Unless the owner of the vehicle consents, forty-eight hours' notice of the test must be served on him (k). Notice is not required where the test is within forty-eight hours of an accident (l). [37]

(v.) **Speed Indicators.**—Every motor vehicle first registered on or after October 1, 1937 (except invalid carriages, land tractors and motor cycles whose engine capacity does not exceed 100 c.c.), must have an efficient speed indicator with a margin of accuracy of 10 per cent. (m). The speed indicator must be kept in good working order and free from obstruction so that it can always be easily read (n). [38]

(vi.) **Reversing.**—Every motor vehicle which exceeds 8 cwts. in weight unladen must be capable of travelling both forwards and backwards, but it must not travel backwards more than may be requisite for the safety or convenience of the occupants of the vehicle or of traffic on the road (o). [39]

(g) 1937 Regulations, paras. 30, 34, 39, 42; 30 Halsbury's Statutes 841, 843
845, 847.

(h) *Ibid.*, para. 30 (3), 34 (3), 39 (3), as amended by the 1938 Amendment Regulations; 30 Halsbury's Statutes 841, 843, 845.

(i) Motor Vehicles (Construction and Use) (Amendment) No. 2 Provisional Regulations, 1938, dated October 21, 1938.

(j) See *post*, p. 29.

(k) If the notice is served by registered post it must be posted 72 hours before the time appointed for the test.

(l) 1938 Amendment Regulations, para. 9; 30 Halsbury's Statutes 892.

(m) 1937 Regulations, para. 11; 30 Halsbury's Statutes 837.

(n) *Ibid.*, para. 70; *ibid.*, 853. It is interesting to note that it is a defence under this regulation if the defect occurred on the journey when the breach of the regulations was detected, or if steps had already been taken to remedy it when it was discovered.

(o) *Ibid.*, para. 80; *ibid.*, 855.

(vii.) **View in the Front and Safety Glass.**—Every motor vehicle must be so constructed that the driver can at all times have a full view of the road and traffic ahead (*p*). The glass of wind-screens and windows facing the front of the vehicle (except glass in the upper deck of a double-decked vehicle) must be safety glass (*q*). All glass or other transparent material must be maintained in such a condition that it does not obscure the vision of the driver (*r*). [40]

(viii.) **Mirrors.**—Every motor vehicle (except motor cycles, land tractors, motor vehicles towing a trailer in which a person keeps a lookout at the back) must be equipped (either internally or externally) with a mirror so constructed and fitted as to assist the driver if he desires to become aware of traffic to the rear of the vehicle (*s*). [41]

(ix.) **Wind-Screen Wipers.**—An efficient automatic wind-screen wiper must be fitted to every vehicle which is so constructed that the driver cannot by opening the wind-screen or otherwise obtain an adequate view to the front of the vehicle without looking through the wind-screen (*t*). [42]

(x.) **Hooters.**—Every motor vehicle, except locomotives and land tractors, must be fitted with an instrument capable of giving audible and sufficient warning of its approach or position (*u*). Except in the case of a fire engine, ambulance, police or salvage corps vehicle, the instrument must not be a gong or bell, nor except for a fire engine or police or salvage corps vehicle a syren.

No person may sound any hooter between 11.30 p.m. and 7 a.m. on any road which is in a built-up area under the Road Traffic Act, 1934 (*w*), except where the vehicle is used for fire brigade, salvage corps, ambulance or police purposes, and observance of the regulation would be likely to hinder the use of the vehicle for the purpose (*a*). Also no person shall sound a hooter or permit it to be sounded when a motor vehicle is stationary (*b*). [43]

(xi.) **Silencers, Smoke and Noise.**—Every vehicle worked by an internal combustion engine must be fitted with a silencer, or other contrivance suitable and sufficient for reducing as far as may be reasonable the noise caused by the escape of the exhaust (*c*). Every motor vehicle must also be so constructed that no unavoidable smoke or visible vapour is emitted (*d*). Under a further regulation the vehicle must be maintained, driven and used, so that no smoke, visible vapour, grit, sparks, ashes, cinders or oily substances which could be prevented by taking any reasonable step or the exercise of reasonable care, be emitted from it. There is an absolute prohibition on the emission of smoke or other substances which might cause damage or endanger the safety

(*p*) 1937 Regulations, para. 14; 30 Halsbury's Statutes 838.

(*q*) *Ibid.*, para. 16; *ibid.*, 839.

(*r*) *Ibid.*, para. 72; *ibid.*, 854.

(*s*) *Ibid.*, para. 15; *ibid.*, 838.

(*t*) *Ibid.*, para. 17; *ibid.*, 839.

(*u*) *Ibid.*, para. 18; *ibid.*, 839.

(*x*) See *post*, p. 18.

(*a*) 1937 Regulations, para. 78; 30 Halsbury's Statutes 858. It should be noted that there are no other qualifications or provisoies to this regulation.

(*b*) 1937 Regulations, para. 79; 30 Halsbury's Statutes 855.

(*c*) *Ibid.*, para. 19; *ibid.*, 839.

(*d*) *Ibid.*, para. 20; *ibid.*

of other persons using the road (*e*). In regard to noise no person shall use or permit to be used on a road any motor vehicle which causes excessive noise owing to any defect, disrepair, or faulty adjustment or to faulty packing (*f*). The use of a motor vehicle in such a manner as to cause excessive noise is also prohibited by the regulations (*g*). The silencer must be kept in use and in good and efficient working order (*h*). [44]

(xii.) **Tyres.**—The regulations contain detailed provisions in regard to the type of tyres to be fitted to the various classes of vehicle (*i*). In particular it should be mentioned that as from January 1, 1940, all heavy motor cars and motor cars weighing more than one ton, including those registered on or before January 2, 1932, must be equipped with pneumatic tyres. This does not apply to heavy motor cars exceeding 4 tons in weight, mainly used in operations which necessitate working on rough ground or unmade roads, or to vehicles used by or on behalf of local authorities in connection with street cleansing, collection of refuse, or the disposal of the contents of cesspools or to a turntable, fire escape or a tower wagon if the vehicle is, after January 1, 1940, equipped with tyres of soft or elastic material. The tyres must be maintained in such condition as to be free from any defect which might in any way cause damage to the surface of the road or danger to persons on or in the vehicle or to other persons using the road (*k*). [45]

(xiii.) **Stopping Engine when Stationary.**—The driver must, when his vehicle is stationary otherwise than through enforced stoppage in traffic, stop his engine so far as is necessary for the prevention of noise (*l*). This regulation does not apply to prevent examination of the engine when running. [46]

(xiv.) **Wings.**—Heavy motor cars, motor cars and motor cycles, must in general be provided with wings to catch as far as practicable mud or water thrown up by the rotation of the wheels unless adequate protection is afforded by the body of the vehicle (*m*). [47]

(xv.) **Miscellaneous.**—Among the other matters covered by the regulations are the permitted overhang (*n*), maximum weights, laden and unladen (*o*), distribution of weight (*p*), the markings on vehicles (*q*), speed limit discs (*r*), and generally in regard to trailers (*s*). It must be stressed that the regulations are very detailed, that they are constantly being amended, so that for details of any particular regulation reference should be made to the regulations in force for the time being. [48]

(*c*) 1937 Regulations, para. 73; 30 Halsbury's Statutes 854.

(*f*) *Ibid.*, para. 75; *ibid.*, 854. It is a defence under this regulation if it is shown that the defect is of a purely temporary nature and could not have been prevented by reasonable care or that the defect was the responsibility of some person other than the person charged if he is not the owner.

(*g*) 1937 Regulations, para. 76; 30 Halsbury's Statutes 855.

(*h*) *Ibid.*, para. 89; *ibid.*, 853.

(*i*) *Ibid.*, paras. 26, 31, 35, 40, 48, 51; *ibid.*, 840, 842, 844, 847, 849.

(*k*) *Ibid.*, para. 71; *ibid.*, 854.

(*l*) *Ibid.*, para. 77; *ibid.*, 855.

(*m*) *Ibid.*, paras. 36, 41, 44; *ibid.*, 845, 847, 848.

(*n*) *Ibid.*, paras. 29, 33, 38; *ibid.*, 841, 842, 845.

(*o*) *Ibid.*, paras. 24, 61, 62, 63, 64, 65; *ibid.*, 840, 852.

(*p*) *Ibid.*, paras. 7, 25, 66; *ibid.*, 836, 840, 853.

(*q*) *Ibid.*, paras. 54—57; *ibid.*, 850.

(*r*) *Ibid.*, para. 58; *ibid.*

(*s*) *Ibid.*, paras. 48—53, 84—87; *ibid.*, 848—850, 856.

(xvi.) **Track-Laying Vehicles.**—There are regulations governing the construction and use of track-laying vehicles, namely the Motor Vehicles (Construction and Use) (Track-Laying Vehicles) Provisional Regulations, 1937 (*t*). A track-laying vehicle is one designed and constructed that the weight is transmitted to the surface either by means of continuous tracks or by a combination of wheels and continuous tracks in such circumstances that the weight transmitted to the road surface by the tracks is not less than half the weight of the vehicle (*u*). These regulations follow in outline the general Construction and Use Regulations. [49]

SPEED LIMITS (*v*)

General Speed Limit.—It is an offence for a person to drive a motor vehicle on a road in a built-up area at a speed exceeding thirty miles an hour (*a*). The M. of T. can by order increase or reduce the speed limit, but any order made under this power must, before it becomes effective, be approved by a resolution of both Houses of Parliament.

A length of road is deemed to be a road in a built-up area (*a*) if a system of street lighting furnished by means of lamps placed not more than 200 yards apart is provided on it, unless a direction that it shall be deemed not to be a road in a built-up area is in force, or (*b*) if a direction that it shall be deemed to be a road in a built-up area is in force (*b*).

Directions either de-restricting or restricting roads may be given in respect of a length of road outside the London Traffic Area (*c*) by the local authority after giving public notice and consultation with the chief officer of police and with the consent of the M. of T. (*d*). The Minister after public notice of his intention can make directions affecting trunk roads (*e*).

The local authorities empowered to make directions restricting or de-restricting roads are the councils of county boroughs, of non-county boroughs having a separate police force or a population according to the last census of 20,000 or over, of urban districts having a population of 20,000 or over, of metropolitan boroughs and the Common Council of the City of London. Elsewhere the relevant local authority is the county council (*f*).

Before making a direction the local authority must give public notice of intention, and as mentioned, the chief of police of the area must be consulted and the consent of the Minister is required. There is no special procedure prescribed to be followed by the local authority when making a direction. The Minister has power to override the local authorities in making directions. Wherever the Minister is of opinion that the local authority has failed to make a direction that a length of road should be deemed not to be in a built-up area, where in

(*t*) Dated May 10, 1937. See p. 96 of Mahaffy and Dodson's Road Traffic Acts and Orders Supplement, 1939 ; 30 Halsbury's Statutes 874.

(*u*) 1937 Regulations, para. 3 ; 30 Halsbury's Statutes 835.

(*v*) For emergency legislation, see annual continuation volumes to this work, and Butterworths' Emergency Legislation Service.

(*a*) Road Traffic Act, 1934, s. 1 ; 27 Halsbury's Statutes 535. By sub-s. 10 this section was to have remained effective until December 31, 1939, only, but by Expiring Laws Continuance Act, 1939, the section now continues in force until December 31, 1940.

(*b*) *Ibid.*

(*c*) See title LONDON ROADS AND TRAFFIC.

(*d*) Road Traffic Act, 1934, s. (4) (a) ; 27 Halsbury's Statutes 536.

(*e*) See title TRUNK ROADS and the Trunk Roads Act, 1936, Sched. I. ; 29 Halsbury's Statutes 201, as modified by numerous S.R. & Os.

(*f*) Road Traffic Act, 1934, s. 1 (9) ; 27 Halsbury's Statutes 537.

his opinion such a direction should have been made or has failed to revoke a direction restricting a road where such revocation should have been made, he can himself make the direction or revoke the direction made by the local authority as the case may be (g). Before exercising this power the Minister must give notice of his intention to the local authority concerned, and if the local authority represent to the Minister that the direction should not be made or should not be revoked, as the case may be, the Minister must hold a local inquiry under the powers in sect. 47 of Road and Rail Traffic Act, 1933 (h). Of course, the local inquiry is not a judicial inquiry, and the Minister is not bound to give effect to any objections raised at it. The Minister can always subsequently revoke any direction made by him, and a local authority with his consent can revoke any direction made by it (i).

It is the duty of the local authority to erect and maintain traffic signs in the prescribed forms and places (k) for the purpose of giving guidance to motorists of the restriction or de-restriction of roads (l).

The powers given to the Minister have, of course, been extensively used. It is not possible to give a list of the various orders and directions, but an index of them is kept at the Ministry. [50]

Special Speed Limits.—Under sect. 10 of the Road Traffic Act, 1930 (m), as amended by sect. 2 (4) of the Road Traffic Act, 1934 (n), various speed limits are prescribed for different classes of vehicle. The Minister of Transport has power by regulation to vary the speed limits set out in the First Schedule to the Road Traffic Act, 1930, as amended by the First Schedule of the 1934 Act. Any regulations before they become effective must be approved by a resolution of both Houses of Parliament. Regulations have been made fixing speed limits for track-laying vehicles (o), namely the Motor Vehicles (Variation of Speed Limit) Regulations, 1937 (p). The present speed limits under the Road Traffic Act, 1930, as amended are as follows :

In the first place there are for this purpose two conditions as to tyres which may or may not be fulfilled in regard to any particular vehicle. The first condition (referred to as condition A) is that all the wheels on the vehicle and on any trailer have pneumatic tyres. The second condition (referred to as condition B) is that if the wheels do not have pneumatic tyres, they should have tyres made of soft or elastic material (q). [51]

The maximum speeds are :

1. *Passenger Vehicles*, namely vehicles constructed solely for the carriage of passengers and their effects.

(g) Road Traffic Act, 1934, s. 1 (5); 27 Halsbury's Statutes 536.

(h) 26 Halsbury's Statutes 911.

(i) Road Traffic Act, 1934, s. 1 (6); 27 Halsbury's Statutes 537.

(k) See the Traffic Signs (Speed Limit) Provisional Regulations, 1935, dated January 4, 1935, and amending regulations dated May 20, 1935, and the Minister's Directions dated May 20, 1935, printed on pp. 641 and 675 of Mahaffy and Dodson's Road Traffic Acts and Orders, 2nd ed. (1936).

(l) See title ROAD SIGNS AND TRAFFIC SIGNALS.

(m) 23 Halsbury's Statutes 619.

(n) 27 Halsbury's Statutes 539.

(o) For a definition of a track-laying vehicle, see *ante*, p. 18.

(p) Dated September 7, 1937, see p. 118 of Mahaffy and Dodson's Road Traffic Acts and Orders, 1939 Supplement.

(q) For the cases when pneumatic tyres are required to comply with the Construction and Use Regulations, see *ante*, p. 17.

- (1) If the vehicle is a heavy motor car (*r*) or is adapted to carry more than seven passengers excluding the driver and is not drawing a trailer and if condition A (*a*) is satisfied. Thirty m.p.h.
- (2) If the vehicle is adapted to carry not more than seven passengers, excluding the driver, and is not a heavy motor car, and is drawing a two-wheeled trailer and condition A (*a*) is satisfied. Thirty m.p.h.
- (3) Invalid carriages (*r*). Twenty m.p.h.
- (4) Vehicles in respect of which condition A (*a*) is satisfied, adapted to carry not more than seven passengers, and is not a heavy motor and is not drawing a trailer, no special speed limit (*s*).
- (5) Other cases not included in any of the above. Twenty m.p.h.
[52]

2. *Goods Vehicles*, i.e. vehicles constructed or adapted for use for the conveyance of goods or burden of any description (*t*).

- (1) When not drawing a trailer.
 - (a) Motor cars (*r*) if condition A (*a*) is satisfied or where condition B (*a*) is satisfied if the motor car weighs less than one ton, and motor cycles (*r*) satisfying either of these conditions. Thirty m.p.h.
 - (b) Motor cars exceeding one ton in weight unladen, satisfying only condition B (*a*). Twenty m.p.h.
 - (c) Heavy motor cars (*r*) if condition A (*a*) is satisfied, and the vehicle :
 - (i.) is constructed or adapted for the conveyance of horses and used solely for that purpose ; or
 - (ii.) weighs five tons or less unladen, and is not fitted with a body and is not carrying a load except that required for the purpose of testing. Thirty m.p.h.
 - (d) Other heavy motor cars satisfying either condition A or B (*a*). Twenty m.p.h.
- (2) When drawing a trailer.
 - (a) If condition A (*a*) is satisfied or if the trailer is attached to the drawing vehicle by partial superimposition in such manner as to cause a substantial part of the weight to be borne by the vehicle, and condition B (*a*) is satisfied. Twenty m.p.h.
 - (b) If the trailer is not attached by partial superimposition and condition B (*a*) is satisfied. Twelve m.p.h.
 - (3) If neither conditions A or B (*a*) are satisfied. Five m.p.h. [53]
3. Locomotives and motor tractors.
- (1) Heavy locomotives (*r*). Five m.p.h.

(*r*) See definitions, *ante*, pp. 12, 13.

(*s*) This of course includes the vast majority of ordinary motor cars.

(*t*) A vehicle constructed for carrying goods cannot escape the speed limit for goods vehicles by being adapted to carry passengers, see *Fry v. Bevan* (1937), 81 Sol. Jo. 60. A Ford utility car has also been held to be a goods vehicle, see *Hubbard v. Messenger*, [1938] 1 K. B. 300; Digest Supp. The maximum weight of a motor car for this purpose is $2\frac{1}{2}$ tons.

(*a*) See *ante*, p. 19.

(2) Light locomotives (b).

(a) when not drawing a trailer or not drawing more than two trailers if conditions A or B (c) are satisfied. Twelve m.p.h.

(b) In any other case. Five m.p.h.

(3) Motor tractors (b).

(a) When not drawing a trailer if conditions A or B (c) is satisfied. Twenty m.p.h.

(b) When drawing one trailer.

(i.) If condition A (c) is satisfied. Twenty m.p.h.

(ii.) If condition B (c) is satisfied. Twelve m.p.h.

(c) In any other case. Five m.p.h. [54]

These speed limits do not apply to track-laying vehicles (cc) concerning which the Motor Vehicles (Variation of Speed Limit) Regulations, 1937 (d), apply. Under these regulations the maximum speed limit for all track-laying vehicles is twenty m.p.h., and in certain cases the speed limits are twelve and five m.p.h. [55]

Miscellaneous Provisions in regard to Speed Limits. (a) *Speed Discs.*

—Under the Motor Vehicles (Construction and Use) Regulations, 1937 (e), regulation 58, every vehicle (f) (where the vehicle is drawing a trailer, the regulation applies to the trailer) which is restricted to a maximum speed of twenty m.p.h. must exhibit in a conspicuous position at the rear a disc not less than 8 in. in diameter with the figures "20" in certain specified size and colour (g). [56]

Offences.—To exceed a speed limit is an offence punishable on a first conviction with a fine not exceeding £20 and on a second or subsequent conviction with a fine not exceeding £50 (h). A person who aids or abets the commission of an offence is liable to the same punishment, and this applies to an employer who instructs a driver to exceed a speed limit. In this case any time-table, schedule or direction to the driver showing that the journey is to be completed within such a time that the maximum permitted speed must be exceeded is evidence of the offence (i). [57]

Evidence.—A person cannot be convicted of exceeding a speed limit solely on the evidence of one witness to the effect that in the opinion of the witness the person charged was exceeding the speed limit (k). This provision has been the subject of a number of judgments, in particular the cases of *Brighty v. Pearson* (l) and *Melhuish v. Morris* (m) should be carefully considered (n). [58]

(b) See definition, *ante*, p. 12.

(c) See *ante*, p. 19.

(cc) See definition, *ante*, p. 18.

(d) Dated Sept. 7, 1937.

(e) S.R. & O., 1937, No. 229.

(f) But excluding an invalid carriage. See *ante*, p. 13.

(g) See Motor Vehicles (Construction and Use) (Amendment) Provisional Regulations, 1937, dated September 29, 1937.

(h) Road Traffic Act, 1930, s. 10; 23 Halsbury's Statutes 619, and amended by the Road Traffic Act, 1934, s. 2; 27 Halsbury's Statutes 538. Imprisonment can only be imposed for non-payment of the fine. For disqualification and endorsement of licences for this offence, see *ante*, p. 11.

(i) Road Traffic Act, 1930, s. 10 (6); 23 Halsbury's Statutes 620.

(k) *Ibid.*, s. 10 (3), as amended by s. 2 (3) of the Road Traffic Act, 1934.

(l) (1938), 4 All E. R. 127; Digest (Supp.).

(m) (1938), 4 All E. R. 98; Digest (Supp.).

(n) For full discussion, see 186 L. T. Jo. p. 347.

Exemptions.—Under sect. 3 of the Road Traffic Act, 1934 (*o*), any vehicle being used for the purposes of a fire brigade, an ambulance or the police is exempt from any speed limit if the observance of the speed limit would be likely to hinder the use of the vehicle for the purpose for which it is being used. Under powers conferred by sect. 121 (2) of the Road Traffic Act, 1930 (*p*), the Minister of Transport has made regulations (*q*) exempting from the provisions of the Act as to speed limits all vehicles owned by the Admiralty, the War Department or the Air Ministry, and used for any naval, military or air force purpose, or vehicles so used while being driven by persons for the time being subject to the orders of any member of the armed forces of the Crown.

[59]

LIGHTING REGULATIONS

The rules regulating the lights on vehicles are made not under the Road Traffic Acts, 1930–1937, but the Road Transport Lighting Act, 1927, by the Minister of Transport under powers conferred on him by that Act (*r*).

Under sect. 1 of the Road Transport Lighting Act, 1927 (*s*), every vehicle must during the hours of darkness carry two lamps showing a white light to the front and one lamp showing a red light to the rear. The lights must be visible for a reasonable distance and the lamps must be kept properly trimmed, lighted and in efficient condition.

The hours of darkness are during the period of summer time (*t*) between one hour after sunset and one hour before sunrise, and during the rest of the year between half-an-hour after sunset and half-an-hour before sunrise (*u*). This means sunset and sunrise by local time and not by Greenwich time (*a*).

The M. of T. is authorised to make regulations regarding the nature and position of the statutory lamps and any other lamps on vehicles, and also regarding the use of lights on vehicles generally (*b*). The present regulations made under this power are the Road Vehicles Lighting Regulations, 1936 (*c*). It should be noted that there is no statutory limit to the number of lights on a vehicle, but no red light may be shown in the front of a vehicle nor any light other than a red

(*o*) 27 Halsbury's Statutes 589.

(*p*) 28 Halsbury's Statutes 686.

(*q*) The Motor Vehicles (Armed Forces) (Variation of Speed Limit) Regulations, 1939; S.R. & O. 1939, No. 1450.

(*r*) The illumination of number plates is governed by separate regulations made by the Minister under s. 12 (1) (e) of the Roads Act, 1920; 19 Halsbury's Statutes 96.

(*s*) 19 Halsbury's Statutes 100. For emergency legislation, see annual continuation volumes to this work, and Butterworths' Emergency Legislation Service.

(*t*) Usually this is between 2 o'clock in the morning of the day next following the third Saturday in April and 2 o'clock in the morning of the day following the first Saturday in October, see the Summer Time Act, 1922, and the Summer Time Act, 1925; 19 Halsbury's Statutes 420, 421.

(*u*) Road Transport Lighting Act, 1927, s. 1 (4); 19 Halsbury's Statutes 101.

(*a*) Gordon v. Cann (1899), 68 L.J. (Q.B.) 484; 42 Digest 850, 55.

(*b*) Road Transport Lighting Act, 1927, s. 3; 19 Halsbury's Statutes 101.

(*c*) S.R. & O., 1937, No. 392. Mahaffy and Dodson's Road Traffic Acts and Orders, 1939 Supplement, p. 44.

light to the rear (*d*). This does not extend to prohibit lights for internal illumination or for lighting number plates, taxi-meters nor for traffic indicators or stop lights. In passing it should be mentioned that traffic indicators and stop lights are not compulsory, but if used they must comply with the provisions of the Motor Vehicles (Direction Indicator and Stop Light) Regulations, 1935 (*e*).

The following are some of the more important provisions of the regulations governing the use of lights on vehicles. The two statutory front lights must be so fixed that the centres of the lamps are not more than 5 ft. from the ground and so that no part of the vehicle (except driving mirrors and traffic indicators when extended) extends laterally on the same side as the lamp more than 12 in. (*f*). The statutory front lights must be on opposite sides of the vehicle and must be of the same power and fixed at the same height from the ground. The rear red light must be fixed so that it is either on the centre line or on the offside, and no part of the vehicle may project at any time to the rear of the light more than 6 ft. measured horizontally (*g*). The rear light must not be more than 3 ft. 6 in. from the ground unless in addition to such lamp there are also fixed to the vehicle at a height of not more than 3 ft. 6 in. from the ground, a red reflector and a white surface conforming with the regulations (*h*).

The regulations contain provisions to prevent dazzle from head lamps. These provisions do not apply to the ordinary side lights which must have bulbs not exceeding seven watts in power and must be fitted with frosted glass or similar material. Head lamps must either (1) be permanently deflected downwards so as to be incapable of dazzling a person standing 25 yds. from the vehicle and with an eye level at least 3 ft. 6 in. from the ground, or (2) be capable of being deflected downwards or both downwards and to the left at the will of the driver, so as to prevent dazzling a person as above, or (3) be capable of being extinguished by the operation of a device which at the same time causes another beam from the same or a different lamp incapable of dazzling a person as above (*i*).

When a vehicle is stationary it must still have the statutory front and rear lights, but not any light from a bulb of more than seven watts in power (*k*). This provision does not apply (*a*) in the case of an enforced stoppage, (*b*) to public service vehicles stopping to pick up or set down passengers, (*c*) to lamps for interior illumination, (*d*) to break-down vehicles or tower waggons when in use for their special purposes, (*e*) to searchlights or special lamps on vehicles for naval, military, air force, police or fire brigade purposes.

In the case of vehicles in car parks, the Chief Officer of Police of any police area, if satisfied that a part of a road used for parking is adequately lighted, may give consent to the use of the road as a parking place for vehicles without any lights (*l*).

(*d*) Road Transport Lighting Act, 1927, s. 2; 19 Halsbury's Statutes 101.

(*e*) S.R. & O., 1935, No. 897. Mahaffy and Dodson's Road Traffic Acts and Orders, 2nd ed. (1936), p. 699.

(*f*) The Road Vehicles Lighting Regulations, 1936, regulation 6. In the case of horse-drawn vehicles the maximum height is 5 ft. 9 in.

(*g*) *Ibid.*, regulation 13. The figure of six feet is perhaps a little surprising.

(*h*) *Ibid.*, regulation 14. This regulation does not apply to Public Service Vehicles.

(*i*) *Ibid.*, regulation 9. Vehicles first registered on or before October 4, 1936, do not have to comply with this regulation.

(*k*) *Ibid.*, regulation 12.

(*l*) *Ibid.*, regulation 18.

Animal drawn vehicles must carry a lamp showing white to the front and red to the rear. One lamp will be sufficient if the vehicle or its load does not extend more than 6 ft. behind the lamp (*m*).

There are special regulations which apply to vehicles towing other vehicles (*n*), to vehicles carrying a load which overhangs or projects (*o*), to bicycles (*p*) and to hand-drawn vehicles. A hand-drawn vehicle need only carry a light if with the load it exceeds 2½ ft. in width, 6 ft. in length or 4½ ft. in height, or if it is not kept as near as possible to edge of the carriageway (*q*). [60]

GOODS VEHICLES

The Road and Rail Traffic Act, 1933 (*r*), introduced a new system for the control and licensing of goods vehicles. The objects of this new system were to increase safety on the roads and to avoid uneconomic competition in the transport industry, while securing adequate facilities for the transport of goods having regard to the interests of the public.

No person may use a goods vehicle on a road for the carriage of goods (a) for hire or reward, or (b) in connection with his trade or business unless he holds a licence (*s*). There are three types of licence, namely "A," "B" and "C" licences.

"A" licences are public carriers licences, and authorise the use of the vehicles for the carriage of goods for hire or reward or in connection with the business of a public carrier. It is a condition of the licence that the vehicles shall not be used for the purposes of any business carried on by the holder of the licence except that of a public carrier or of storing or warehousing goods carried by him (*t*).

A "B" licence is a hybrid and is known as "a limited carriers'" licence. It authorises the holder to use the vehicles either in connection with a trade or business carried on by him or for the carriage of goods for hire or reward (*u*). This type of licence is practically always granted subject to conditions which restrict the use of the vehicles for the carriage of goods for hire or reward in any of the following ways, namely (1) that they must be used only in a specified district or between specified places, (2) that certain classes or descriptions of goods only may be carried, (3) that goods may be carried only for specified persons, (4) that such other conditions must be complied with as the licensing authority thinks fit to impose in the public interest and with a view to preventing uneconomic competition (*a*).

Class "C" licences are private carriers' licences. The holder is entitled to use the vehicles for the carriage of goods in connection with any trade or business carried on by him but subject to the express condition that they shall not be used for the carriage of goods for hire or reward (*b*). [61]

(*m*) Road Transport Lighting Act, 1927, s. 6 (1); 19 Halsbury's Statutes 102.

(*n*) *Ibid.*, s. 8.

(*o*) *Ibid.*, s. 7.

(*p*) *Ibid.*, s. 5.

(*q*) Road Vehicle Lighting Regulations, 1936, regulation 17, but see the emergency provisions.

(*r*) 26 Halsbury's Statutes 870.

(*s*) Road and Rail Traffic Act, 1933, s. 1 (1); 26 Halsbury's Statutes 872.

(*t*) *Ibid.*, s. 2 (2); *ibid.*, 874.

(*u*) *Ibid.*, s. 2 (3); *ibid.*

(*a*) *Ibid.*, s. 8 (3); *ibid.*, 880.

(*b*) *Ibid.*, s. 2 (4); *ibid.*, 875.

"Hire or Reward."—A person who does not carry on any business does not have to obtain a licence unless he is receiving some reward for carrying the goods. In the following cases it is expressly enacted that it shall not be deemed to be carrying for hire or reward, namely :

- (1) The delivery or collection by a person of goods sold, used or let on hire in the course of a trade or business carried on by him.
- (2) The delivery or collection by a person of goods which have been or are to be subjected to any process or treatment in the course of a trade or business carried on by him.
- (3) The carriage by a person engaged in agriculture of goods in connection with the business of agriculture carried on by another person in the same locality, so long as the vehicle is properly licensed for the carriage of goods in connection with the owner's own business of agriculture.
- (4) The carriage of goods in a vehicle which is being used in accordance with the regulations applicable to an excise licence taken out by a manufacturer or repairer of or dealer in mechanically propelled vehicles.
- (5) The carriage of goods in a vehicle used for demonstration purposes (c).

In these cases a Class "C" licence may be required but not a Class "A" or "B" licence. [62]

"Goods Vehicle."—It should be noted that the carriage of goods in an ordinary passenger car whether for hire or reward or in connection with a business needs no licence. A "goods vehicle" is a motor vehicle constructed or adapted for use for the carriage of goods (d). [63]

Exemptions.—In the following cases, although a goods vehicle may be used for carrying goods as mentioned above, no licence is required (e).

- (1) A vehicle used exclusively for agricultural or ancillary purposes and which is taxable for excise licences at a specially low rate.
- (2) A trailer (for any purpose except for the carriage of goods for hire or reward) when drawn by a vehicle constructed solely for the carriage of not more than seven passengers excluding the driver and their effects.
- (3) Tramcars and trolley vehicles.
- (4) Public service vehicles.
- (5) Hackney carriages.
- (6) Hearses.
- (7) Vehicles used by local authorities or their contractors for road cleansing, collecting refuse, emptying cesspools, etc., or for purposes of enactments relating to weights and measures or the sale of food and drugs.

(c) Road and Rail Traffic Act, 1933, s. 1 (5); 26 Halsbury's Statutes 872.

(d) *Ibid.*, s. 1 (2); *ibid.* It is still a matter of doubt whether, for example, the mere removal of a back seat of a private saloon car for the carriage of, say, flowers by a market gardener would make the car "adapted for use for the carriage of goods."

(e) *Ibid.*, s. 1 (7); *ibid.*, 873.

- (8) Police, fire brigade and ambulance vehicles.
- (9) Vehicles for towing or removing goods from disabled motor vehicles or for miners' rescue purposes.

The M. of T. can make regulations exempting other vehicles (f). Such regulations have been made (*inter alia*) for vehicles used by commercial travellers for obtaining orders (but not for advertisement or for sale or delivery of goods) if constructed solely for carriage of not more than seven passengers (excluding the driver) and their effects, and not adapted for the carriage of goods other than samples (g). [64]

Application for Licences.—The application for a licence must be made to the licensing authority for the area in which the permanent base or centre is situated from which the authorised vehicles will be used. In the case of "C" licences the area is that in which the principal place of business or head office of the applicant is situated (h).

The licensing authority is the chairman of the traffic commissioners for any traffic area including a deputy appointed by the Minister (i).

There is a very important difference between the provisions governing the grant of Class "A" and "B" licences and Class "C" licences. In the case of Class "C" licences the licensing authority must grant a licence unless the applicant is the holder of a licence which is suspended or unless a licence previously granted to him has been revoked. In these cases the licensing authority has a discretion either to grant or to refuse an application (k). On the other hand, in the case of Class "A" and "B" licences, the licensing authority has full power in his discretion either to grant or to refuse the application, or to grant a licence in respect of vehicles other than those in the application (l).

The Act lays down that in exercising his discretion the licensing authority shall take certain matters into consideration. He must have regard primarily to the interests of the public generally, including those of persons requiring as well as those of persons providing facilities for transport. In particular he must consider (1) the extent to which any existing licence held by the applicant authorises the use of goods vehicles for the carriage of goods for hire or reward, (2) the previous conduct of the applicant as a carrier of goods, (3) the number and type of vehicles proposed to be used under the licence, (4) in determining the number of vehicles to be authorised, the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair, (5) the extent to which the vehicles for which application is made will be in substitution for horse-drawn vehicles previously used by the applicant (m).

(f) Road and Rail Traffic Act, 1933 ss. 1 (7), 25; 26 Halsbury's Statutes 873, 892.

(g) Road and Rail Traffic Act (Exemption) Regulations, 1938; S.R. & O., 1938, No. 508.

(h) Road and Rail Traffic Act, 1933, s. 5 (4); 26 Halsbury's Statutes 878.

(i) *Ibid.*, s. 4; *ibid.*, 876, see also titles TRAFFIC COMMISSIONERS and LONDON ROADS AND TRAFFIC.

(k) *Ibid.*, s. 6 (1) (b); *ibid.*, 878. For the cases when a class "C" licence can be suspended or revoked, see *post*, p. 28.

(l) *Ibid.*, s. 6 (1) (a).

(m) *Ibid.*, s. 6 (2) (a).

The appeal tribunal (*n*) have laid down that the applicant for an "A" licence must not only prove that there are persons ready and willing to employ him, but must also satisfy the authority that the haulage he proposes to do cannot for some reason be done by other carriers already engaged on carriage whether by road or rail (*o*).

In any case where the licensing authority refuses to grant a licence or grants a different licence than that applied for or imposes conditions, the authority must if requested state the reasons for the decision in writing. There is a right of appeal (*p*).

In certain cases the authority must grant an "A" licence. This is where the applicant satisfies the authority that the vehicles to be licensed will be used exclusively for the purposes of a contract entered into between the applicant and a trader (not being another haulage contractor) for the carriage of goods for a continuous period of at least one year (*q*). In this case an "A" licence must be granted unless the previous conduct of the applicant as a carrier of goods shows in the opinion of the authority that he is not a fit person to receive a licence. The licence granted must only be sufficient in extent to enable the contract to be performed unless the authority otherwise directs (*r*). [65]

Duration of Licences.—At the present time the duration of licences is for "A" licences five years, for "B" licences two years and for "C" licences five years (*s*). The licensing authority may where he considers it advisable grant a licence for a shorter period in order to arrange a suitable and convenient programme of work.

Short-term licences can also be granted in cases where they are required for the purposes of seasonal business or the execution of a particular piece of work or for other purposes of short duration. A short-term licence must not exceed three months in duration. For administrative purposes, pending the determination of an application for a licence, the licensing authority can grant other short-term licences for periods not exceeding, in the case of "A" licences, twelve months, in the case of "B" licences six months and in the case of "C" licences three months. A licence cannot be renewed, but application can be made for the grant of a further licence on the expiry of a licence, and if the holder shows that his vehicles have been fully and regularly employed and that there has been no material change, a new licence will ordinarily be granted unless the grant of the licence would result in excess of facilities over requirements (*t*). Pending the grant of a new licence, if application has been made the existing licence remains in force until the application is disposed of (*u*). [66]

(*n*) See *post*, p. 29.

(*o*) *Enston & Co. v. L. M. & S. Rail. Co.*, [1934] Ry. & Can. Tr. Cas. 3 ; Digest (Supp.). This ruling applies only to "newcomers," see *Hawker's Case*, 1935, 23 Traffic Cases 23 ; Digest Supp.

(*p*) See *post*, p. 29.

(*q*) Road and Rail Traffic Act, 1933, s. 7 ; 26 Halsbury's Statutes 879.

(*r*) As to the position of a contractor who agrees to provide cartage facilities to a local authority as and when required, see *Re Clarke (Edwin)*, Motor Transport, 1937, September 11, p. 1, and September 18, p. 1.

(*s*) Under the Road and Rail Traffic Act, 1933, s. 3 ; 26 Halsbury's Statutes 876, the periods were two years, one year and three years respectively. The Amendment Act of 1937 permitted the periods to be extended by regulation made by the M. of T. The periods mentioned above were prescribed by the Goods Vehicles (Duration of Carriers Licences) Provisional Regulations, 1938, dated August 31, 1938.

(*t*) See *Four Amalgamated Rail. Cos. v. Bouts-Tillotson, Ltd.* (1937), 25 Traf. Cas. 158 ; Digest Supp.

(*u*) Road and Rail Traffic Act, 1933, s. 3 (5) ; 26 Halsbury's Statutes 876.

Conditions attached to Licences.—The following conditions are annexed to all licences :

- (1) That the vehicles must be maintained in a fit and serviceable condition.
- (2) That all statutory rules and regulations concerning speed limits, maximum weights, the loading of vehicles are complied with.
- (3) The statutory requirements in respect of the time for which drivers of certain vehicles may remain continuously on duty and the hours which they have to rest must be observed (*a*).
- (4) The regulations regarding the keeping of records must be observed (*b*).
- (5) The statutory provisions as to wages and conditions of employment must be complied with (*c*).

In the case of "B" licences any of the special conditions mentioned above may be annexed. [67]

Variation, Revocation and Suspension of Licences.—During the currency of any licence the holder may apply to the licensing authority to vary the terms of the licence as to the number of vehicles or the alteration of conditions (*e*).

A licence may be revoked or suspended by the licensing authority by whom the licence was granted on the ground that any of the conditions of the licence have been broken.

The authority must if requested by the holder of the licence hold a public inquiry, and the authority must satisfy himself from evidence that owing to the frequency of the breach of the conditions or to the breach having been committed wilfully, or to the danger to the public involved in the breach, that the licence should be revoked or suspended. Instead of revoking or suspending the licence altogether some of the vehicles authorised can be removed from the scope of the licence. When it comes to the knowledge of a licensing authority that a vehicle to which a licence relates is not being used for some reason other than fluctuation of business it can vary the licence to exclude the vehicle (*f*). [68]

Procedure on Application for Licences and Objections.—An application must be made in the prescribed forms and give the necessary particulars (*g*). In cases where the licensing authority is bound to grant a licence or to take the place of an existing licence or which is of

(*a*) Under the Road Traffic Act, 1930, s. 19; 23 Halsbury's Statutes 624, as amended by the Road and the Rail Traffic Act, 1930 (Variation of Provisions of Section 19) Orders, 1934, 1935 and 1937 (S.R. & O. 1934, No. 1186; 1935, No. 491; 1937, No. 490), statutory provisions regulate the hours of work and of rest of the drivers of public service vehicles and certain goods vehicles.

(*b*) Under the Road and Rail Traffic Act, 1938, s. 16, and the Goods Vehicles (Keeping of Records) Regulations, 1935 (S.R. & O., 1935, No. 314), it is obligatory on the holder of licences to keep records of journeys, etc., in the statutory form.

(*c*) The Road Haulage Wages Act, 1938, created a system for the control and regulation of wages of workmen employed by public and private carriers.

(*e*) Road and Rail Traffic Act, 1938, s. 10; 26 Halsbury's Statutes 881.

(*f*) *Ibid.*, s. 10 (3).

(*g*) For general rules on procedure and fees, see the Goods Vehicles (Licences and Prohibitions) Regulations, 1936, S.R. & O., 1936, No. 269, and the Goods Vehicles (Licences and Prohibitions) (Amendment) Provisional Regulations, 1938.

a trivial nature, no notice of the application need be given by the licensing authority and no objection can be lodged. In the case of all other applications for "A" or "B" licences, the licensing authority must publish in a prescribed manner notice of the application specifying the time within which and the manner within which objections may be lodged. The authority must take into consideration all objections by persons already providing facilities for transport either by road, rail or other means in the district or between the places the applicant intends to serve (*h*). The permissible grounds for objection are that suitable transport facilities for the district or between the places to be served would be in excess of requirements if the application be granted or that any of the conditions of a licence held by the applicant have been broken. The authority may hold inquiries if he considers it necessary but is not bound to do so. [69]

Appeals.—Appeals can be made by (a) an applicant for the grant of a licence, (b) an objector, (c) the holder of a licence whose licence has been revoked or suspended.

Appeals are made to an appeal tribunal set up under the Road and Rail Traffic Act, 1933 (*i*). The tribunal holds a public inquiry at which the parties appear in person or by counsel or solicitor, and oral evidence may be given (*k*). The tribunal have power to make what order it thinks fit, and the decision of the tribunal on an appeal is final and binding on the licensing authority. The decisions of the Appeal Tribunal are reported in the Railway and Canal Traffic Cases. The tribunal has power to award any party such costs as it considers reasonable. [70]

Examiners.—The M. of T. can appoint examiners whose duty it is to secure that goods vehicles are maintained in a fit and serviceable condition and that all statutory regulations are observed (*l*). Examiners are given statutory power to inspect goods vehicles, to detain vehicles for the purpose of inspection and to enter premises. An examiner can also prohibit the use of a vehicle if it appears to him to be unfit for service. An appeal from a prohibition by an examiner lies to a certifying officer appointed under the Road Traffic Act, 1930 (*m*), and from him to the Minister of Transport.

Examiners and police constables in uniform have authority to require the production of licences and the statutory records required to be kept under the Act (*n*). [71] •

Transfer of Licences.—A goods vehicle licence cannot be transferred or assigned (*o*). In the case of death, bankruptcy, liquidation, etc., of a holder of a licence, if notice is given to the licensing authority within fourteen days and application for a new licence is made within one month, the licence remains effective for the benefit of the person

(*h*) Road and Rail Traffic Act, 1933, s. 11; 26 Halsbury's Statutes 882.

(*i*) S. 15; *ibid.* 885.

(*k*) For the rules governing the procedure at appeals, see rule 23 of the Goods Vehicles (Licences and Prohibitions) Regulations, 1936 (S.R. & O., 1936, No. 269), and the Road and Rail Traffic Act, 1933 (Appeal Tribunal) Rules, 1934 (S.R. & O., 1934, No. 657), and the Road and Rail Traffic Act, 1933 (Appeals Tribunal) Fees Order, 1934 (S.R. & O., 1934, No. 709).

(*l*) Road and Rail Traffic Act, 1933, s. 17; 26 Halsbury's Statutes 888.

(*m*) S. 69; 28 Halsbury's Statutes 660.

(*n*) Road and Rail Traffic Act, 1933, s. 18; 26 Halsbury's Statutes 889.

(*o*) *Ibid.*, s. 21; *ibid.*, 890.

to whom the vehicles have passed (*p*). In the case of the sale of a business the old licences must be surrendered by the vendor and an application for new licences made by the purchaser. [72]

LONDON

See title LONDON ROADS AND TRAFFIC.

(*p*) Para. 2 of the Goods Vehicles (Licences and Prohibitions) Regulations, 1936 ; S.R. & O., 1936, No. 269.

ROAD TRAFFIC COMMISSIONERS

See TRAFFIC COMMISSIONERS.

ROAD TRAFFIC SIGNALS

See TRAFFIC SIGNALS.

ROADS, BREAKING UP

See BREAKING UP ROADS.

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ROADS CLASSIFICATION

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See also titles :

BREAKING UP ROADS ;
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ROAD AMENITIES ;
ROAD GRANTS ;
ROAD MAKING AND IMPROVEMENT ;
ROADS OR STREETS ;
TRANSPORT, MINISTRY OF ;
TRUNK ROADS ;

Introductory.—The purpose of this title is to indicate the various ways in which highways are classified. Highways may be considered in this respect with reference to the extent of the public right, to the repairability of the way, to the authority responsible for maintenance, and to its status under the Minister of Transport's classification. It will also be considered in what way the classification of a way may be changed. [73]

The Extent of the Public Right.—A highway is a way over which all subjects of the Crown may lawfully pass, but the dedication of the way may limit the method in which this right may be exercised. Thus a way may be a carriageway, or may be limited to a driftway, bridleway or footway. A way over which a limited class of persons is entitled to pass, e.g. a churchway leading to a parish church, is not a highway (*a*), and the remedy for obstruction is by individual action and not by indictment.

The general rule is that the greater includes the less. Thus, a bridleway includes a footway (*b*), and a driftway no doubt includes a bridleway and footway. A carriageway includes a driftway, bridleway and footway (*c*). But as an incident of the original dedication there may be an exception to this rule. It is thus possible to dedicate a carriageway over which there is no right of driftway (*d*), and while

(*a*) But such a way is included in the definition of "highway" in the Highway Act, 1885, s. 5; 9 Halsbury's Statutes 512.

(*b*) Co. Litt. 56a.

(*c*) *Ibid.*, *Davies v. Stephens* (1836), 7 C. & P. 570; 26 Digest 289, 219, *per Lord DENMAN, C.J.*

(*d*) *Ballard v. Dyson* (1808), 1 Taunt. 279; 26 Digest 265, 58.

there is no common law right to use the banks of navigable rivers for the purpose of towing (e) there may exist in such banks, by dedication, a footway coupled with a right to take horses for the purpose of towing (f). [74]

Repairability.—From the aspect of the liability to repair roads may be classified in four ways :

- (1) Highways repairable by the inhabitants at large.
- (2) Highways repairable by the Minister of Transport.
- (3) Highways repairable by individuals.
- (4) Highways which are not the subject of a legal liability to repair.

[75]

(1) *By the Inhabitants at Large.*—Every ancient highway is *prima facie* repairable by the inhabitants of the parish. There are exceptions to this rule, details of which will be found in the title REPAIR OF ROADS, but it is only necessary here to refer to the Highway Act, 1835, sect. 23 (g), which provided that no new road made after the coming into operation of the Act should be a highway which the inhabitants are compellable to repair unless three months' notice of intention to dedicate were given and the road made to the satisfaction of the surveyor and two justices. The dedication of a highway without compliance with these formalities results in the creation of a highway not repairable by anyone, for the person dedicating and his successors in title are under no obligation to repair. This state of affairs may be terminated by methods discussed later in the title. [76]

(2) *By the Minister of Transport.*—The Minister of Transport is the highway authority in respect of trunk roads and of roads constructed by him under the Development and Roads Improvement Funds Act, 1909, sect. 8 (h), and is empowered or under a duty to maintain such roads. Whether the Minister is under a legal liability to repair, in the sense that he is liable to indictment for non-repair, is a very difficult legal question but of little or no practical importance. [77]

(3) *By Individuals.*—This subject is fully discussed elsewhere in this work, for example, in the titles HIGHWAY AUTHORITIES, and REPAIR OF ROADS. It is sufficient here to note that a highway may be repairable by individuals by statute, by custom and *ratione clausuræ* or *ratione tenuræ*. [78]

(4) *Non-repairable Roads.*—Newly constructed roads made by individuals, unless the formalities prescribed by the Highway Act, 1835, sect. 23 (i), have been complied with, are not repairable by anyone. [79]

Transfer of Liability.—Liability to repair may be brought into existence in the case of a non-repairable road, or the liability or duty to repair may be transferred, by virtue of the provisions of various statutes.

A non-repairable road may be made repairable by the inhabitants at large under the P.H.A., 1875, sect. 152 (k), or the Private Street Works Act, 1892, sect. 20 (l).

(e) *Ball v. Herbert* (1789), 3 Term Rep. 253; 26 Digest 262, 34.

(f) *Winch v. Thames Conservators* (1872), L. R. 7 C. P. 458; 26 Digest 262, 35.

(g) 9 Halsbury's Statutes 59.

(h) *Ibid.*, 212.

(i) *Ibid.*, 59.

(k) 18 Halsbury's Statutes 687.

(l) 9 Halsbury's Statutes 203.

A road repairable *ratione clausuræ* or *ratione tenuræ* may be made repairable by the inhabitants at large under the Highway Act, 1835, sect. 62 or sect. 93 (*m*), the Highway Act, 1862, sect. 35 (*n*), the Highway Act, 1864, sect. 24 (*o*), or the P.H.A., 1875, sect. 148 (*p*).

A road repairable by the inhabitants at large may become repairable by the Minister of Transport if it is improved by the Minister with a view to superseding any part of an existing trunk road (*q*). [80]

The Authority Responsible for Maintenance.—Roads are classified according to the highway authority responsible for their maintenance as a result of a series of statutes. The terms in use at the present day are "trunk roads," "county roads" and "district roads." This classification is not quite exhaustive as it does not include roads, other than trunk roads, in respect of which the Minister of Transport is the highway authority (*r*) and does not include the roads in county boroughs, which cannot be sub-divided as there is only one authority responsible for maintenance. [81]

(1) *Trunk Roads.*—A trunk road is one of the principal roads in Great Britain constituting the national system of routes for through traffic. The roads specified in the First Schedule to the Trunk Roads Act, 1936 (*s*), as modified by numerous orders (*t*), became trunk roads on April 1, 1937. Trunk roads are a fixed class and no further roads can be added to the class, except where part of a road is superseded by a newly constructed road (*u*), neither can a trunk road cease to be a trunk road, by administrative action.

The Minister of Transport is the highway authority in respect of trunk roads, and all functions previously exercisable in respect of any trunk road by a highway authority or by any local authority under any Act of Parliament (including any private or local Act (*a*)), are exercisable by him. The provisions of various Acts have been modified in their application to the Minister. [82]

(2) *County Roads.*—County roads are an extensive class and by virtue of L.G.A., 1929, sect. 29 (*b*), now include every road which on April 1, 1930, was a main road, or which would thereafter have become a main road, and every other road in respect of which the county council are by virtue of the L.G.A., 1929, the highway authority. The expression "main road" is now obsolete, but it is necessary to have regard to it in considering what are now county roads.

The following roads are county roads :

1. Roads which ceased to be turnpike roads (*c*) between December 31, 1870, and August 16, 1878, and were not ordered to remain ordinary highways on the passing of the Highways and Locomotives (Amendment) Act, 1878 (*d*).
2. Roads which were turnpike roads on August 16, 1878, and afterwards ceased to be turnpike roads (*c*).
3. Roads which were declared to be main roads by quarter sessions

(*m*) 9 Halsbury's Statutes 79, 105. (*n*) *Ibid.*, 134. (*o*) *Ibid.*, 149.

(*p*) 13 Halsbury's Statutes 685.

(*q*) Trunk Roads Act, 1936, s. 1 (3); 29 Halsbury's Statutes 186.

(*r*) See Development and Roads Improvement Act, 1909, s. 8; 9 Halsbury's Statutes 212; and Road Traffic Act, 1930, s. 57 (1); 23 Halsbury's Statutes 652.

(*s*) 29 Halsbury's Statutes 201—207.

(*t*) 30 Halsbury's Statutes 330, annual continuation and supplement.

(*u*) S. 1 (3); 29 Halsbury's Statutes 186.

(*a*) S. 3 (1); 29 Halsbury's Statutes 187.

(*b*) 10 Halsbury's Statutes 903.

(*c*) 16 Halsbury's (2nd ed.) 191.

(*d*) 9 Halsbury's Statutes 166.

between August 16, 1878 and April 1, 1889, or by county councils between April 1, 1889, and April 1, 1930.

4. Roads constructed by county councils under the Development and Roads Improvement Funds Act, 1909 (e).

5. All roads in rural districts, whether within the above classes or not.

6. Classified roads which immediately before April 1, 1930, were vested in urban district councils.

7. Roads vested in urban district councils which become classified roads after April 1, 1930.

8. Roads which become county roads as a result of an order under s. 1 (3) of the Trunk Roads Act, 1936.

9. Roads which are declared to be county roads as the result of orders made by the county council under s. 15 of the Highways and Locomotives (Amendment) Act, 1878 (ee). [83]

(3) *District Roads.*—This is a convenient term for all roads which are highways repairable by the inhabitants at large and are not trunk roads or county roads, and relates now to unclassified roads in urban districts. [84]

Change of Status.—Provision is made for alteration in the status of a road under this basis of classification, as under others. A district road becomes a county road on being made a classified road (f).

A district road may also become a county road although it remains unclassified, by an order of the county council (g) or of the Minister of Transport on appeal.

A county road may also become a district road. An order reducing the status of a main (county) road to that of an ordinary highway (district road) may be made by the Minister of Transport under the Highways Locomotives (Amendment) Act, 1878, sect. 16(h), as amended by the Highways and Bridges Act, 1891, sect. 4 (i), but this power has been restricted by L.G.A., 1929, sect. 31 (k), which provides that no such order shall be made in respect of a classified road. In the case of an order affecting a road in a borough the Minister is required to consider any representations made by the council of the borough, and if so requested by the Council, to hold a local inquiry.

A claim by an urban authority to maintain a road under L.G.A., 1929, sect. 32 (l), or delegation under sect. 35 (m), does not affect the status of the road.

A road cannot be made a trunk road and a trunk road cannot be reduced to the status of a county or district road by administrative action, except as regards a part of a trunk road which is superseded (n) by a new route constructed by the Minister. In such a case the new route becomes a trunk road on the date specified in the Minister's order, and the superseded part becomes a county road on April 1 following the date of service by the Minister of notice that the new route is ready to be used for the purposes of through traffic. [85]

Classification by the Minister of Transport.—Sect. 17 of the M. of T. Act, 1919 (o), authorises the Minister of Transport to make advances

(e) 9 Halsbury's Statutes 207.

(ee) 9 Halsbury's Statutes 172.

(f) L.G.A., 1929, s. 31 (2); 10 Halsbury's Statutes 905.

(g) Highways and Locomotives (Amendment) Act, 1878, s. 15; 9 Halsbury's Statutes 172; L.G.A., 1929, s. 37; 10 Halsbury's Statutes 912.

(h) 9 Halsbury's Statutes 173.

(i) *Ibid.*, 192.

(k) 10 Halsbury's Statutes 905.

(l) *Ibid.*, 906.

(m) *Ibid.*, 910.

(n) Trunk Roads Act, 1936, s. 1 (3); 29 Halsbury's Statutes 186.

(o) 3 Halsbury's Statutes 435.

by way either of grant or loan for the purpose (*inter alia*) of the construction, improvement or maintenance of roads. By sub-sect. (2) the Minister was authorised, for the purpose of such advances, to classify roads in such manner as he thought fit.

The Minister's classification is now important not only for the purposes of grant, but because it is primarily the basis upon which roads are classified as county roads under the L.G.A., 1929. By sect. 134 of that Act (*p*) "classified road" means a road classified by the Minister of Transport under the M. of T. Act, 1919, in Class I. or Class II., or in any class declared by him to be not inferior to those classes for the purposes of the Act. The classification is also material for the purposes of the Restriction of Ribbon Development Act, 1935, for by sect. 2 of that Act (*q*) restrictions are applied on the passing of the Act to all roads which on May 17, 1935, were classified roads.

In the Ministry's list of roads Class I. roads are indicated by the letter "A" and Class II. roads by the letter "B." The classification is reconsidered from time to time as circumstances arise which render it desirable to raise a road to a higher standard of construction, or to make it the subject of grant, or on the other hand, render it unnecessary to maintain it at the same standard as before. [86]

London.—See title LONDON ROADS AND TRAFFIC.

(*p*) 10 Halsbury's Statutes 971.

(*q*) 28 Halsbury's Statutes 82.

ROADS OR STREETS

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Introductory.—In this work there are many titles dealing with various aspects of the law and practice relating to highways. It is the purpose of this title to give some guide to the scope of these and other titles.

Roads have no doubt existed in England from time immemorial, but their number has been added to, and is being added to constantly. Some are made by private persons for their own use, and with such local government law has little concern, but on dedication a public right is created. The origin of a road may therefore for the purposes of this work be considered in relation to its dedication to the public as a highway. This subject is discussed in the title DEDICATION AND ADOPTION OF HIGHWAYS. Dedication does not necessarily imply a liability to repair, and the origin of such a liability is discussed in the same title and also in the title PRIVATE STREETS.

When a road has become the subject of the powers and duties of a local authority it is important to know what type of a road it is, and

which authority is liable to repair it. This is dealt with in the titles HIGHWAY AUTHORITIES; ROADS CLASSIFICATION; REPAIR OF ROADS; BY-PASS ROADS. [87]

Making of New Roads.—The construction of new roads may be undertaken by the M. of T. or by a highway authority. Reference should be made to the titles HIGHWAY AUTHORITIES, ROAD MAKING AND IMPROVEMENT, and TRUNK ROADS.

A necessary preliminary to construction is survey (see title ROAD MAKING AND IMPROVEMENT), and after survey it may be necessary to reserve the land so that it is not, pending the construction of the road, put to some other use which would increase the cost of acquiring the site. Reservation may be achieved by the prescription of a building or improvement line (title BUILDING AND IMPROVEMENT LINES), by means of a planning scheme (titles TOWN AND COUNTRY PLANNING and TOWN PLANNING SCHEMES) or by the imposition of restrictions under the Restriction of Ribbon Development Act, 1935 (see title RIBBON DEVELOPMENT).

Before construction is commenced it may be necessary to acquire land. This subject is dealt with under the heading ACQUISITION OF LAND (OTHER THAN COMPULSORY), in the title ROAD MAKING AND IMPROVEMENT, and in the title COMPULSORY PURCHASE OF LAND.

The powers of highway authorities to construct new roads are dealt with in the title ROAD MAKING AND IMPROVEMENT, and in that title and in the title REPAIR OF ROADS will be found observations on the duty of the highway authority to the public during operations of improvement and repair. See also the title HIGHWAYS, RIGHTS OF PRIVATE PERSONS AS TO. [88]

Highway Authorities.—A road being constructed, it is important to know by whom it is to be maintained and to appreciate the extent to which authorities other than the highway authority are entitled, or may be authorised to exercise the whole or part of the functions of the highway authority. On this subject reference should be made to the titles HIGHWAY AUTHORITIES; DELEGATION OF HIGHWAY POWERS, and ROADS CLASSIFICATION.

Apart from these major functions references may be made to the titles SCAVENGING, and BREAKING UP ROADS, in which will be found a discussion of the powers of highway authorities and statutory undertakers to interfere with the surface of roads both at common law and by statute, HIGHWAY DRAINS and LEVEL CROSSINGS. [89]

Functions of Highway Authorities.—Obstructions, lawful and unlawful, and highway nuisances are dealt with in a series of titles, e.g. HIGHWAY NUISANCES; OBSTACLES ON HIGHWAYS; OVERHEAD WIRES; and PROJECTIONS OVER HIGHWAYS.

The termination of the public right of passage is discussed in the titles DIVERSION AND STOPPING UP OF HIGHWAYS; HIGHWAYS, EXTINCTION OF; and in REPAIR OF ROADS.

Bridges in highways are dealt with in the title BRIDGES. [90]

London.—See title LONDON ROADS AND TRAFFIC.

ROADS, REPAIR OF

See REPAIR OF ROADS.

ROADSIDE WASTE

See ROADS CLASSIFICATION.

ROOFS

See BUILDING BYE-LAWS.

ROUNABOUTS

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See also titles :

BYE-LAWS ; GOOD RULE AND GOVERNMENT ;	HIGHWAY NUISANCES ; NUISANCES.
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Bye-Laws under P.H.A. Amendment Acts, 1890 and 1907.—By sect. 38 of the P.H.A. Amendment Act, 1890 (*a*), the local authority may make bye-laws for the prevention of danger from whirligigs and swings when such whirligigs and swings are driven by steam power. Though no definition of "whirligig" is to be found in any statute it has been generally assumed that a steam roundabout is a whirligig within the section, and in this title the term "roundabout" will be used in that sense.

It will be observed that the application of these bye-laws is limited to roundabouts driven by steam power and that they can only be directed to the prevention of danger.

(*a*) 18 Halsbury's Statutes 839. The section is in force in all boroughs and urban districts for which Part III. of the Act has been adopted; *ibid.*, ss. 2 and 3; and in rural districts (Rural District Councils (Urban Powers) Order, 1931, S.R. & O., 1931, No. 580); 24 Halsbury's Statutes 262.

Model bye-laws under this section have not been issued, the M. of H. having expressed the view that it is doubtful whether such bye-laws are necessary to-day. Such bye-laws when made usually deal with the following matters: the provision of space around the roundabout; the proper fixing thereof and its proper control by competent persons while being driven; the limitation of the speed at which it is worked and of the number of persons using it; the forbidding of dangerous conduct on the part of such persons; and the stopping of the machine in the case of illness of any user of the roundabout (b). [91]

Sect. 82 of the P.H.A. Amendment Act, 1907 (c), enables the local authority, for the prevention of danger, obstruction or annoyance to persons using the sea shore, to make and enforce bye-laws to regulate, *inter alia*, the erection or placing on the sea shore of any swings or roundabouts whether drawn or propelled by animals, persons or mechanical power. [92]

Bye-Laws under L.G.A., 1933.—Roundabouts and like things (whether driven by steam power or not) may also to a limited extent be affected by bye-laws made under the L.G.A., 1933 (d), county and borough councils for good rule and government. A bye-law in the following terms has been held valid: "No person shall to the annoyance or disturbance of residents or passengers keep or manage a shooting gallery, swing boat, roundabout or other like thing in any street or public place or on land adjoining or near to such street or public place, provided that this bye-law shall not apply to any fair lawfully held" (e).

Under this section bye-laws are also frequently made forbidding the playing of steam organs or other instruments worked by mechanical means (such as are frequently used in connection with roundabouts) to the annoyance of residents or passengers.

The powers contained in this section may be found useful as enabling a local authority to make bye-laws directed to the prevention of obstruction to traffic in a street or public place or of the mere annoyance or disturbance of residents and passengers in contradistinction to the prevention of danger (f). [93]

Highway Act, 1835.—In certain circumstances roundabouts driven by steam may be dealt with under sect. 70 of the Highway Act, 1835 (g), under which it is not lawful to erect any steam engine within twenty-five yards of a carriageway unless it is in a building or behind a wall or fence sufficient to conceal or screen it. *Mens rea* is an essential ingredient of an offence under the section (h). [94]

Roundabouts, etc., as Nuisances.—A roundabout may well be a nuisance at common law without being a danger, and in such case the proprietor or the person working or managing it may be indicted for a common law nuisance (i), and injunctions have been granted to

(b) The bye-laws must be reasonable and must not require any protection involving a large expense (*Enniscorthy Urban Council v. Field*, [1904] 2 I. R. 518).

(c) 13 Halsbury's Statutes 941.

(d) S. 249; 26 Halsbury's Statutes 439. See titles BYE-LAWS and GOOD RULE AND GOVERNMENT.

(e) *Teale v. Harris* (1896), 60 J. P. 744; 38 Digest 159, 67.

(f) *Teale v. Harris, supra*.

(g) 9 Halsbury's Statutes 85; see title HIGHWAY NUISANCES.

(h) *Harrison v. Leaper* (1862), 5 L. T. 640; 26 Digest 437, 1542.

(i) See *Spruzen v. Dossell* (1896), 12 T. L. R. 246; 36 Digest 185, 294.

restrain noises, etc., caused by steam organs and roundabouts (*k*). The erection of a roundabout on a village green with a known or defined boundary would be a public nuisance and indictable accordingly (*l*). [95]

London.—One of the bye-laws made by the L.C.C. under the Municipal Corporations Act, 1882, s. 23 (*m*) and L.G.A., 1888, sect. 16 (now replaced by L.C.C. (General Powers) Act, 1934, Part VI (*n*), for good rule and government, prohibits roundabouts, swingboats, etc., to be kept or managed on land adjoining or near streets so as to cause obstruction or danger to the traffic of any such streets and prohibits the making of noise by organs, etc., from roundabouts, etc., to the annoyance of residents or passengers. Metropolitan borough councils have similar bye-laws making powers (see title GOOD RULE AND GOVERNMENT, Vol. VI., p. 240). [96]

(*k*) *Inchbald v. Robinson* (1869), L. R. 4 Ch. 388; 36 Digest 185, 290; *Winter v. Baker* (1887), 3 T. L. R. 569; 36 Digest 216, 591; *Lambton v. Mellish* (1894), 3 Ch. 163; 36 Digest 215, 579; *Bedford v. Leeds Corpn.* (1913), 77 J. P. 430; 36 Digest 192, 339; and see title NUISANCES.

(*l*) Commons Act, 1876, s. 29; 2 Halsbury's Statutes 597.

(*m*) 10 Halsbury's Statutes 584.

(*n*) 27 Halsbury's Statutes 422.

ROUNDING-OFF CORNERS

See BUILDING AND IMPROVEMENT LINES.

ROYAL BOROUGHS

The use of the word "Royal" by boroughs is governed by the general rule of the constitution that titles and dignities can be conferred only by the Sovereign as the fountain of honour (*a*).

The only boroughs in England which are entitled to be styled "Royal Boroughs" are Kensington, Kingston-upon-Thames, and Windsor. There are certain boroughs, for example, Leamington and Tunbridge Wells, which are not "Royal Boroughs," but properly include the word "Royal" in their respective titles (*b*).

Kingston-upon-Thames has been described as a "Royal Borough" by many ancient writers and in a number of charters, the earliest of which is dated A.D. 983. In 1927, King George V. commanded through the Home Secretary that, as the title "Royal" was then

(*a*) See 6 Halsbury (2nd Ed.), 541.

(*b*) See article "Royal Boroughs" in *The Municipal Review*, November, 1932, p. 427.

already conferred upon the borough, Kingston-upon-Thames was entitled to style itself a "Royal Borough."

Windsor is referred to as a "Royal Town" in a number of charters, from A.D. 1065 onwards, and further bases its title upon the opening words of the Patent Roll (Chancery), 35 Edward I., m. 35, in connection with the Pontage of Windsor.

When Kensington became a borough, after the passing of the London Government Act, 1899, Queen Victoria indicated that she wished it to have the title of "The Royal Borough of Kensington," but died before the title was conferred. The grant of this title to Kensington was made by King Edward VII. and is the only modern precedent. It is in the form of Letters Patent under the King's Sign Manual.

The Municipal Corporations Act, 1883, dissolved a number of ancient corporations without prejudice to their right to apply for new charters, and in the First Schedule to that Act, Sutton Coldfield was described as "The Royal Town of Sutton Coldfield," and was the only borough so described. In the new charter which was granted to Sutton Coldfield under that Act it was not described as a "Royal Town" or a "Royal Borough" and it cannot, therefore, properly now be so described. It also appears that Derby was made a "Royal Borough" in A.D. 828 by King Egbert, but the title has not been used in modern times.

Many towns include Royal Manors, but this does not entitle them to be described as "Royal Towns." It is understood that towns have wrongly described themselves as "Royal" in loyal addresses and other official documents and that when this has occurred the Home Office have returned the document concerned for the word "Royal" to be deleted. [97]

RUBBISH

See DISINFECTION; REFUSE.

RUINOUS BUILDINGS

See DANGEROUS BUILDINGS.

RULES

See ORDERS ; STATUTORY RULES AND ORDERS.

RURAL DISTRICT COUNCIL

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*See also titles : CLERK OF RURAL DISTRICT COUNCIL ;
RURAL DISTRICT COUNCIL ACCOUNTS ;
RURAL DISTRICT COUNCILS ASSOCIATION.*

Status.—Rural district councils were created by the L.G.A., 1894, sect. 21 (2) of which provided that for every rural sanitary district there should be a R.D.C., whose district should be called a rural district (*a*). Rural sanitary districts consisted of the area of the poor law union, exclusive of any portion included in an urban district (*b*).

The status and constitution of all local authorities were, however, reconsidered and dealt with by the L.G.A., 1933, sect. 1 of which enacts that for purposes of local government, England and Wales (exclusive of London) shall be divided into administrative counties and county boroughs, and administrative counties shall be divided into county districts, being either non-county boroughs, urban districts or rural districts, and county districts shall consist of one or more parishes (*c*).

Sect. 32 of the L.G.A., 1933, provides that for every rural district there shall be a R.D.C., consisting of the chairman and councillors, and the council shall have all such functions as are vested in the R.D.C. by that Act or otherwise. The R.D.C. shall be a body corporate by the name of the Rural District Council with the addition of the name of the rural district (*d*), and shall have perpetual succession and a common seal, and power to hold land for the purposes of their constitution without licence in mortmain. [98]

No type of local authority has experienced such a marked increase in responsibilities and scope as rural district councils since their creation in 1894. Between that date and the termination of the Great War

(*a*) 10 Halsbury's Statutes 792.

(*b*) P.H.A., 1875, s. 9 ; 18 Halsbury's Statutes 629.

(*c*) 26 Halsbury's Statutes 306.

(*d*) *Ibid.*, 320. In view of the terms of the L.G.A., 1933, s. 32 (2), the correct title of a rural authority would appear to be "The Rural District Council of —," in preference to "The — Rural District Council."

of 1914-1918, the majority of rural authorities had no extensive sanitary or public health responsibilities, and their main problems centred round their highway duties, which were ultimately transferred to county councils by the L.G.A., 1929 (*e*). In a normal rural area the agricultural communities were satisfied with the supplies of water available from the local wells, and their sanitary requirements were limited and simple. In the larger villages and in districts experiencing residential development, water and sewerage schemes were periodically called for, but many of the main responsibilities of the present time (housing, town and country planning, milk and dairies, slaughter-houses, rating and valuation and numerous other duties) were either unknown or relatively unimportant.

During the twenty-five years between 1894 and 1919 the motor car (whether private or bus) was not sufficiently available for the city or town dweller to make it easy for him to take a house in the rural district adjoining his place of business, and prior to 1929 no financial assistance could be granted from the county fund to the district council for the purpose of water and sewerage schemes; and it was not until 1934 that the financial difficulties of the problem in rural areas induced Parliament to pass the Rural Water Supplies Act creating a fund of £1,000,000 with which to assist water development. The powers of rural district councils will be summarised later (*f*), and—though there are certain undertakings affecting municipal and urban authorities which do not usually concern rural councils—there can be no doubt that rural district councils are now very active and essential units of local government.

The status, and incidental efficiency, of rural authorities were advanced by the orders made by the Minister of Health under sect. 46 of the L.G.A., 1929 (*g*), whereby a number of the smaller rural areas were grouped together or absorbed by the larger and more progressive districts. [99]

The Rural Water Supplies Act, 1934 (*h*), enabled many rural councils to undertake piped supplies to an extent previously impracticable. The grants available from the Exchequer were usually made contingent upon the county councils exercising their powers to give financial assistance to district councils under sect. 57 of the L.G.A., 1929 (*i*). In the wake of modern water provision and the resultant sanitary conveniences came the necessity for adequate sewerage and sewage disposal services, which had already been stimulated by the general housing development in rural areas and the schemes of the authorities themselves under the Housing Acts.

The reorganisation of county districts has now been completed. The tendency of reorganisation has been to eliminate the weaker elements of local government, with the result that the rural authorities which now exist are, generally speaking, larger in character and possess greater financial and administrative scope than heretofore. The legislature, with a view to widening the area of charge, has placed, in recent years, increased statutory responsibilities upon county councils, which bodies, in order to ensure the efficiency of local government administration, must of necessity work in close co-operation with rural district councils. [100]

(*e*) S. 30 ; 10 Halsbury's Statutes 904.

(*f*) See post, p. 46 *et seq.*

(*g*) 10 Halsbury's Statutes 916.

(*h*) 27 Halsbury's Statutes 726.

(*i*) 10 Halsbury's Statutes 922. The powers under s. 57 (1) of the L.G.A., 1929, have been replaced by the P.H.A., 1936, s. 307 (1); 29 Halsbury's Statutes 517.

Membership.—In addition to the chairman (who is elected annually but need not be a member of the council) (*k*), councillors are elected by the local government electors for the district (*l*). The term of office is three years (*m*), and the councillors are elected for the several areas into which the district is divided for the purpose of the election of rural district councillors (being either parishes or combinations of parishes, or wards of parishes) (*n*). Where, as is normally the case, a rural parish is not divided into wards or combined with one or more parishes for election purposes, there is a separate election of district councillors for the parish, and sect. 40 of the L.G.A., 1933 (*o*), is the statutory authority for the Rural District Councillors' Election Rules, 1934, which now control these elections.

Where, however, the number of councillors of a rural district is less than five, the Minister may from time to time by order nominate as members of the district council such number of persons as may be necessary to make up the number to five (*p*). 101

Officers and Staff.—The L.G.A., 1933, sect. 107, requires every district council to appoint fit persons to be clerk of the council, treasurer, surveyor, M.O.H. and sanitary inspector or inspectors, and also such other officers (*q*) as the council think necessary for the efficient discharge of the functions of the council. A R.D.C., however, need not appoint a surveyor. They may, if they think fit, appoint more than one M.O.H. (*r*). Subject, as respects the offices of M.O.H. and sanitary inspector, to the provisions of sects. 108–110, the council is empowered by the L.G.A., 1933, to pay to any such officer such reasonable remuneration as they may determine, and (subject as aforesaid) every such officer shall hold office during the pleasure of the council (*s*). A vacancy in the office of M.O.H. or sanitary inspector shall be filled within six months, or such longer period as permitted in any particular case by the Minister (*t*), and the offices of clerk of the council and treasurer shall not be held by the same person or by persons who stand in relation to one another as partners or as employer and employee (*u*). 102

Apart from the general power contained in the Act of 1933, sect. 38 of the R. & V.A., 1925, enables a R.D.C. (in its capacity of rating authority) to employ a competent person to give advice or assistance in connection with the valuation of any hereditaments in their area (*a*), and sect. 55 of the same Act makes it lawful for them to appoint such

(*k*) L.G.A., 1933, s. 33 (1); 26 Halsbury's Statutes 320.

(*l*) *Ibid.*, s. 35 (2); *ibid.*, 321.

(*m*) *Ibid.*, s. 35 (3); *ibid.*

(*n*) *Ibid.*, s. 38; *ibid.*, 323. The L.G.A., 1933, did not alter the areas for which rural district councillors were to be elected as they existed prior to its coming into operation; but the numerous Orders made in pursuance of the various County Reviews under the L.G.A., 1929, made considerable alterations in certain counties, where the tendency was to reduce the former number of members. See **DISTRICT COUNCILLOR**—“Election,” Vol. V., p. 38.

(*o*) 26 Halsbury's Statutes 325.

(*p*) L.G.A., 1933, s. 42; 26 Halsbury's Statutes 326.

(*q*) “Officer” includes a servant, L.G.A., 1933, s. 305; 26 Halsbury's Statutes 467.

(*r*) S. 107 (1); 26 Halsbury's Statutes 362.

(*s*) S. 107 (2); *ibid.* Sec, however, s. 121 (1), *post*, p. 44.

(*t*) S. 107 (3); *ibid.*

(*u*) S. 107 (4); *ibid.*

(*a*) 14 Halsbury's Statutes 667.

rating officers, valuation officers and other officers as they think fit, and to pay to them reasonable salaries (b).

Standing deputies in the case of the clerk, treasurer, surveyor, M.O.H. or sanitary inspector may be appointed under sect. 115 of the L.G.A., 1933, and the following section of the Act authorises the appointment of temporary officials in the same cases, as distinct from standing deputies (c). [103]

A member of the council is disqualified for appointment by the council to any paid office (other than that of chairman), and this disqualification operates for twelve months after he ceases to be a member (d). The council may not make it a condition of employment that the person shall, or shall not, be a member of a trade union, and they may not place an employee under any disability for that reason, in consequence of sect. 6 of the Trade Disputes and Trade Unions Act, 1927 (e).

Security must be given by any officer of a rural authority, who by reason of his office is likely to be entrusted with the custody or control of money, and the council may, in the case of any other officer, require security for the faithful execution of his office and the due accounting for all money or property entrusted to him (f). All officers are also made accountable to the authority as regards money and property committed to them and the incidental receipts, payments and other details (g). [104]

Notwithstanding the provisions of sect. 107 (2) of the L.G.A., 1933, as to the holding of office "during the pleasure of the council," there may be included in the terms on which an office is held a provision that the appointment shall not be terminated by either party without giving to the other party such reasonable notice as may be agreed; and where, at the commencement of the Act of 1933, an officer held office upon terms which purported to include such a provision, that provision shall be deemed to be valid. The provision as to the holding of office during the pleasure of the authority does not, however, affect the right or obligation of the officer to retire on obtaining any specified age or on the happening of any specified event under a superannuation scheme (h).

Though the R.D.C. is empowered "to pay reasonable remuneration," they must exercise due discretion, and they are open to surcharge for the payment of excessive wages if an arbitrary sum has been paid without regard to existing labour conditions (i). A contract of service

(b) 14 Halsbury's Statutes 678.

(c) 26 Halsbury's Statutes 367, 368.

(d) L.G.A., 1933, s. 122; 26 Halsbury's Statutes 371.

(e) 19 Halsbury's Statutes 749.

(f) L.G.A., 1933, s. 119; 26 Halsbury's Statutes 369.

(g) *Ibid.*, s. 120; *ibid.*, 370.

(h) *Ibid.*, s. 121 (1); *ibid.*

(i) *Roberts v. Hopwood*, [1925] A. C. 578; 33 Digest 20, 83. Reference should also be made to the dicta of SCRUTON, L.J., in *Re McGrath*, [1934] 2 K. B. 427; Digest Supp., with regard to retrospective *ex gratia* payments to officials. Travelling expenses may, of course, be paid to officials, and the extraordinary growth of the detailed responsibilities of sanitary inspectors in recent years calls for the careful consideration of rural district councils as to the adequacy of the scale of travelling expenses hitherto allowed. An amount like £25 (or even £50) in a large and scattered rural district is generally inadequate if due allowance is made for depreciation, and any attempt to place the allowance at an unduly low figure is unfair to the keen and conscientious official who, in effect, would be subsidising the council out of his own salary if he were to cover large mileages by means of a motor car provided by himself. Admittedly a motor cycle does not call for the same standard of allowance

may, however, provide for payments over and above a routine salary, in respect of work which is outside the scope of the normal employment. Any such further payment must, however, be subject to a prior agreement, although different considerations might well apply where extra services are performed on the understanding that as soon as the work was complete, the council would determine the amount of special remuneration (*k*). Full time officers of a R.D.C. are entitled to superannuation under the L.G. (Superannuation) Act, 1937 (*l*). [105]

Internal Procedure.—Sched. III., Part V., 4 of the L.G.A., 1933, empowers a local authority, subject to the provisions of that Act, to make standing orders for the regulation of their proceedings and business, and to vary or revoke any such orders. The Act itself, however, specifically provides for various matters which—by virtue of their being statutory requirements—cannot now be varied, altered or revoked by the council, so that standing orders should clearly differentiate between those matters which can be made the subject of internal regulation and those of a statutory (and absolute) nature.

The statutory directions in the L.G.A., 1933, cover a wide range of matters, some of which were formerly left to the discretion of the local authority, and provide for: Date of Annual Meeting (Sched. III., Part III., 1); Extraordinary Meetings (Part III., 2); Election of Chairman (sect. 33); Vice-Chairman (sect. 34); Term of Office of Councillors (sect. 35 (3)); Acceptance of Office (sect. 61); Resignation (sect. 62); Vacancy by Absence (sect. 63); Notice of Meetings (Sched. III., Part III., 2 (3)); Chairman of Council Meeting (Part III., 2); Quorum of Council (Part III., 4); Record of Attendances (Part V., 2); Decisions (Part V., 1); Mode of Voting (Part III., 6); Invalidation of Proceedings (Part V., 5); Minutes (Part V., 3); Register—Interest in Contracts (sect. 76 (5)); Appointment of Committees (sect. 85); Casting Vote in Committee (sect. 96 (2)).

The press have the statutory right to be admitted to meetings of the council, subject to the proviso to the Local Authorities (Admission of the Press to Meetings) Act, 1908 (*m*); but the standing orders may exclude their admission to any meeting of a committee of the council (including the whole council when in committee). Members of the public have no legal right to attend meetings of a district council without its express consent (*n*); and—apart from other considerations—there are no adequate facilities for their attendance in the case of the majority of rural district councils. [106].

Special provisions are contained in sect. 266 of the L.G.A., 1933 (*o*), with respect to contracts. A local authority may enter into contracts necessary for the discharge of any of their functions. All contracts made by the authority, or a committee thereof, must be made in accordance with the standing orders of the local authority, and in the case of contracts for the supply of goods or materials or for the execution

but every incentive should be given to an inspector to pay regular and frequent visits, irrespective of weather conditions. Some councils pay on a mileage basis.

(*k*) See per MAUGHAM, L.J., in *re Audit (Local Authorities) Act, 1927*, and in *re H. W. McGrath*, [1934] 2 K. B. at p. 435; Digest Supp., C. A.

(*l*) 30 Halsbury's Statutes 385. See the title SUPERANNUATION.

(*m*) This provides for the temporary exclusion of the press if a resolution is passed that, in view of the special nature of the business to be dealt with, such exclusion is advisable in the public interest.

(*n*) See *Tenby Corpn. v. Mason*, [1908] 1 Ch. 457; 33 Digest 61, 370, and article 103 J. P. Jo. 470.

(*o*) 26 Halsbury's Statutes 447.

of works, the standing orders shall (a) require that, except as otherwise provided by or under the standing orders, notice of the intention of the authority or committee to enter into the contract shall be published and tenders invited ; and (b) regulate the manner in which notice shall be published and tenders invited : provided that a person entering into a contract with a local authority shall not be bound to inquire whether the standing orders which apply to the contract have been complied with, and contracts, if otherwise valid, shall have full effect notwithstanding that the standing orders applicable thereto have not been complied with. A precedent of standing orders applicable to rural authorities was drawn up in 1935 by the Rural District Councils Association (p).

It is advisable to provide specifically in the standing orders that contracts which exceed in value or amount a specified sum (say, £100), shall be in writing and signed on behalf of the council by the clerk or any other official appointed or authorised for such purpose, but the question as to the formal sealing of contracts is a difficult one and should be determined by the general principles of law applicable thereto (q).

Lawford v. Billericay R.D.C. (r) gave limited protection in the case of a contract not under seal relating to work which was necessary for the purposes for which the council was created. The majority of contracts made by rural authorities will deal with work of this nature, but it is inadvisable for a council to dispense with the seal merely because of the various exceptions which have been engrafted on the old common law rule that a corporate body must contract under seal.

[107]

Standing orders should contain detailed regulations as to the approval of minutes of the council and committees, and various incidental matters, but—in view of the decision in *Hearts of Oak Assurance Co., Ltd. v. James Flower & Son* (s)—attention is directed to Sched. III., Part V., 3 of the L.G.A., 1933, which prescribes that minutes of the proceedings of a meeting of the council or of a committee thereof shall be “drawn up and entered in a book.” The practice of having printed minutes will doubtless become the general rule, in which case the technical question arises as to whether the subsequent binding of such minutes meets the statutory requirement. If a standing order is made prescribing that the signed copies of printed minutes shall be “bound together in a book,” and such book has been properly sewn together (irrespective of the nature of the cover) before the time that formal proof of any minute in any proceedings is necessary, then such bound minutes will, it is submitted, be admissible in evidence without further proof, in pursuance of the terms of Part V., 3 (1) of the Third Schedule. [108]

Duties and Powers.—As each subject of local government administration is fully dealt with in this work under the appropriate heading, it is

(p) A copy of such standing orders can be obtained on application to the Secretary, Rural District Councils Association, St. Stephen’s House, Victoria Embankment, Westminster Bridge, S.W.1.

(q) See Vol. IV., p. 15.

(r) [1903] 1 K. B. 172; 13 Digest 394, 1193.

(s) [1936] Ch. 76; Digest Supp. It was held that loose leaves, fastened together in two covers, did not constitute a “book” within the meaning of the Companies Act, 1929, s. 120.

merely proposed to outline briefly the main duties and powers of rural district councils (*t*). [109]

(a) *Bye-laws* relating to new buildings (*u*) and new streets (*a*). Bye-laws may also be made with respect to such matters as common lodging houses, nuisances, offensive trades, slaughterhouses, tents, vans and sheds (*b*).

(b) *Fire Brigades*.—The council of every county district (which includes a R.D.C.) was made a fire authority by sect. 1 of the Fire Brigades Act, 1938 (*c*) ; and it is now their duty to make provision for the extinction of fires and the protection of life and property in the manner prescribed by the Act.

The Town Police Clauses Act, 1847, sect. 33, authorised the making of a charge for the services of a fire brigade outside its own district, and—except where there were formal agreements in existence between rural authorities and adjacent boroughs or urban districts for the user of their brigades—charges were recoverable from the owners of buildings. This has all been swept away, however, by sect. 5 of the Fire Brigades Act, 1938. [110]

(c) *Housing*.—The obligations in respect of this important matter are very extensive, and rural district councils have been administrative authorities under all the Housing Acts passed since the Great War, 1914–18.

The earliest legislation to introduce Exchequer grants was the Housing Act, 1919, which limited the liability of the authority to the produce of a penny rate, but only comparatively small numbers of houses were built under this Act, which was very costly from a national point of view.

Many houses were, however, erected under the Housing Acts of 1923 and 1924, and improved legislation was passed in 1930, which facilitated the carrying out of individual demolition and the making of clearance orders. This gave way to the Housing Act, 1936 (*d*), which was a consolidating measure, but rural district councils were the subject of specially favourable government contributions under the Housing (Financial Provisions) Act, 1938 (*e*), in the case of all houses provided for the “agricultural population” (*f*).

Certain types of vans and sheds can be dealt with by means of the repair or demolition procedure under the Housing Act, 1936 ; but

(*t*) This summary does not purport to be exhaustive. There are also certain matters which, under the existing law, can be made the subject of special Orders by the M. of H., or which may be adopted by rural district councils with the approval of the Ministry. Reference should be made to the specific matter required in the general index. As regards adoption of powers, see note (*c*), *infra*.

(*u*) P.H.A., 1936 ; ss. 61, 343 ; 29 Halsbury's Statutes 372, 536, and see title BUILDING BYE-LAWS, Vol. II., p. 298, which was, however, written before the P.H.A., 1936, was passed. In the case of a building to which s. 17 of the Restriction of Ribbon Development Act, 1935 ; 28 Halsbury's Statutes 276, applies, a R.D.C., if not the highway authority, must consult with the county council. Moreover, the provisions of certain planning schemes necessitate liaison between the rural authority and the county council.

(*a*) P.H.A., 1875, s. 157 ; 13 Halsbury's Statutes 689, and see title PRIVATE STREETS, Vol. X., p. 382.

(*b*) P.H.A., 1936, ss. 240, 235, 81, 108, 169, 268 ; 29 Halsbury's Statutes 479, 476, 387, 405, 442, 492. See also the titles in this work dealing with these matters.

(*c*) 31 Halsbury's Statutes 586.

(*d*) 29 Halsbury's Statutes 565 *et seq.*

(*e*) 31 Halsbury's Statutes 569 *et seq.*

(*f*) As the 1938 Act is construed as one with the Act of 1936, the expression “agricultural population” has the meaning prescribed by s. 115 (2) of the Housing Act, 1936 ; 29 Halsbury's Statutes 649.

tents, vans and sheds and the inspection of canal boats come within the ambit of the P.H.A., 1936, sects. 268 *et seq.* and 249 *et seq.* (g).

The abatement of overcrowding is dealt with in the Housing Act, 1936, but—in the absence of a special order of the M. of H.—the authority for the operation of the Housing (Rural Workers) Acts, 1926 and 1931 (h), is the county council. [111]

(d) *Infectious Diseases.*—These were formerly dealt with under the Infectious Disease (Notification) Act, 1889, and the Infectious Disease (Notification) Extension Act, 1899 (i). The general duties of rural authorities, however, regarding the prevention of infection and treatment of disease are to be found in Part V. of the P.H.A., 1936, and reference should be made to sect. 143 *et seq.* [112]

(e) *Licences.*—These cover, *inter alia*, game dealers, knackers' yards, petroleum and various matters connected with slaughterhouses and dairies. [113]

(f) *Local Land Charges.*—The Land Charges Act, 1925, and the Orders thereunder apply to rural authorities, and the clerk of the council is required to keep the register (k). [114]

(g) *Milk Supply.*—It is the duty of the R.D.C. to enforce the Milk and Dairies Order, 1926, excluding Part IV., which relates to the Health and Inspection of Cattle (which responsibilities are imposed upon county councils). [115]

(h) *Nuisances.*—The abatement of nuisances (including smoke abatement) under the P.H.A., 1936, is a matter for the R.D.C. in rural districts (l). [116]

(i) *Offensive Trades.*—Many rural authorities have obtained the necessary urban powers from the Ministry in regard to noxious trades or businesses. See sects. 13, 107 *et seq.*, P.H.A., 1936. [117]

(j) *Planning.*—The Town and Country Planning Act, 1932 (m), is of increasing concern to rural councils, which should bear in mind the ease and rapidity with which amenities may be spoiled and other unsatisfactory conditions created unless control is obtained in the early stages of development by means of an appropriate resolution for planning.

The restrictions on ribbon development under the Restriction of Ribbon Development Act, 1935, concern county councils as the highway authority, but co-operation is necessary with respect to plans for houses fronting highways affected by the 1935 Act (n). [118]

(k) *Promotion of Bills.*—Power to promote or oppose local or personal bills is given by Part XIII. of the L.G.A., 1933 (o). [119]

(l) *Public Health.*—This covers a very wide range of subjects, which are dealt with by the P.H.A., 1936. [120]

(m) *Rating and Assessments.*—The R. & V.A., 1925 (p), and certain

(g) 29 Halsbury's Statutes 492 *et seq.*, 482 *et seq.*

(h) 18, 24 Halsbury's Statutes 1162, 370.

(i) 18 Halsbury's Statutes 811, 879.

(k) There appears to be no objection to the Council appointing the surveyor or other nominated official to be the "clerk" for the purpose of the operation of the Land Charges Act, 1925; and this procedure may be considered where it is desired that the responsibility for searches and the incidental certificates should be placed directly with the surveyor, and not the clerk.

(l) Part III.; 29 Halsbury's Statutes 394 *et seq.*

(m) 25 Halsbury's Statutes 472.

(n) See note (a), *ante*, p. 47.

(o) 26 Halsbury's Statutes 443—445.

(p) 14 Halsbury's Statutes 617.

subsidiary Acts, make rural councils the rating authorities for their districts, and prescribe the various matters entrusted to them. The whole of the county rates—as well as the general and special rates, and the additional items of the parishes—are now collected by the rural district councils. The work involved in this connection is extensive and entails the maintenance of a thoroughly efficient rating and collection department. [121]

(n) *Registers*.—Apart from the duties under the Land Charges Act, 1925 (q), and the requirements under the Rent and Mortgage Interest Restrictions Act, 1933 (r), registers have also to be kept in regard to dairies, licences, slaughterhouses, etc. [122]

(o) *Rights of Way*.—The statutory duty of a district council to protect all public rights of way, which was created by the L.G.A., 1894, was expressly saved and continued by the L.G.A., 1929 (s). The Rights of Way Act, 1932 (t), imposed additional responsibilities upon rural authorities. [123]

(p) *Sewerage and Sewage Disposal*.—Schemes for these important services are the primary responsibility of the rural district councils in rural areas. The county council may, however, make grants under sect. 307, P.H.A., 1936 (u). [124]

(q) *Shops*.—The Shops Act, 1934 (a), created new responsibilities for rural district councils, and a considerable amount of supervision is now necessary with respect to the ventilation, temperature and sanitary convenience of retail and wholesale shops, and warehouses in which any persons are employed. [125]

(r) *Slaughterhouses and Knackers' Yards*.—The licensing and control of these are dealt with in sects. 57—62 of the Food and Drugs Act, 1938 (b).

The persons who may slaughter animals on these premises are indicated in the Slaughter of Animals Act, 1938 (c). The Public Health (Meat) Regulations, 1924 (d) and 1935 (e), contain detailed provisions as to slaughtering and its supervision. [126]

(s) *Water Supplies*.—The powers and duties of a R.D.C. in regard to these important matters are now comprised in Part IV. of the P.H.A., 1936 (f).

Grants can be made by county councils under sect. 307 of the same Act, but Exchequer assistance under the Rural Water Supplies Act, 1934 (g), is no longer available. [127]

(q) 15 Halsbury's Statutes 524. See Local Land Charges, *ante*, p. 48.

(r) 26 Halsbury's Statutes 266. A register must be kept of dwelling-houses, the rateable value of which did not on April 1, 1931, exceed £18 and which became decontrolled under the Rent and Mortgage Restriction Act, 1923, through the landlords having obtained possession of them.

(s) 10 Halsbury's Statutes 883. As, however, by virtue of Part III., of L.G.A., 1929, the county council is now the highway authority in rural districts, they would appear to have certain concurrent powers and obligations as regards obstructions, etc. A R.D.C. cannot now repair a public footpath.

(t) 25 Halsbury's Statutes 191.

(u) 29 Halsbury's Statutes 517 (replacing s. 57 (1), L.G.A., 1929).

(a) See s. 18 (3); 27 Halsbury's Statutes 237. The general provision of matters relating to the health and comfort of shop workers under the earlier Acts still rests with the county councils, and the responsibilities of the rural district councils is limited to the matters mentioned in sect. 10 of the Act of 1934.

(b) 31 Halsbury's Statutes 287—291.

(c) 26 Halsbury's Statutes 647.

(d) Lumley's Public Health (10th ed.), Vol. III., p. 3316.

(e) S.R. & O., 1935, No. 187.

(f) 29 Halsbury's Statutes 407 *et seq.*

(g) 27 Halsbury's Statutes 726. See *ante*, p. 42.

Property.—A R.D.C. has power to hold land for the purposes of their constitution without licence in mortmain (*h*). The L.G.A., 1933, s. 125 (*i*), also enable a rural council to acquire or provide and furnish halls, offices and other buildings, whether within or without their area, to be used for the purpose of transacting the business of the authority, and for public meetings and assemblies (*k*).

Sect. 268 of the same Act enables a rural authority to accept, hold and administer any gift of property, whether real or personal, for any local or public purpose, or for the benefit of the inhabitants of the area or of some part thereof, and to execute works incidental to the exercise of the powers conferred by such section. [128]

(*h*) L.G.A., 1933, s. 31 (2); 26 Halsbury's Statutes 320.

(*i*) 26 Halsbury's Statutes 372.

(*k*) They have also certain rights under the L.G.A., 1933, s. 126, for the use of the board room or offices formerly belonging to a Board of Guardians.

RURAL DISTRICT COUNCIL ACCOUNTS

INTRODUCTION	PAGE	PARISH GENERAL AND PARISH STATUTORY REGULATION OF AC- COUNTS	PAGE
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GENERAL AND SPECIAL EXPENSES	51		

See also titles :

ACCOUNTS OF LOCAL AUTHORITIES;
AUDIT;

FINANCE (*Passim*, especially Classification of Financial Articles);
RATE ACCOUNTS.

Introduction.—This article is not intended to be a complete exposition of the accounts of rural district councils. The principles of accounting are of universal application, but the accounts of local authorities must have regard to the statutory provisions regulating such accounts and controlling the finance of the various kinds of local authorities; it is only in this respect that local authority accounts justify special consideration.

The general transactions of rural district councils, although differing in scope from those of other authorities, are similar in character, arising from the provision and financing of communal services. The basic form and content of the accounts are therefore the same as those of other local authorities. In regard to these matters the general titles

ACCOUNTS OF LOCAL AUTHORITIES and FINANCE mentioned above should be carefully studied.

There are, however, special statutory requirements, necessitated by the form of constitution and organisation of rural district councils, and the consideration of these will be the main purpose of this article.

Rural district councils vary considerably in size and importance, but the provisions of sect. 46 of the L.G.A., 1929 (*a*), for a simultaneous review of the administrative areas in a county have undoubtedly tended to secure an improved status and a more progressive administration which is reflected in the accounts.

The accounts of rural district councils are subject to district audit and therefore to some regulation by the Minister of Health, but no general prescription has been made of a form of accounts. [129]

Statutory Regulations Governing Accounts.—Although no general order has been made prescribing the form in which the detailed accounts of rural district councils are to be kept, the fact that the accounts are subject to district audit suggests the convenience of adopting generally the requirements of the Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930 (*b*), where suitable. A summary of these regulations is given under the title BOROUGH ACCOUNTS.

The Rate Accounts (Rural District Councils) Order, 1926 (*c*), issued in pursuance of the provisions of the R. & V.A., 1925 (*d*), applies only to the accounts of the R.D.C. as *Rating Authority*, but it should be noted that the requirements of the order in relation to "special" rates involves the keeping by the R.D.C. of separate accounts with constituent parishes.

Similarly in regard to the allocation of expenses chargeable over part only of the council's area and also to the additional exchequer grants under sect. 94, L.G.A., 1929 (*e*), the R.D.C. has to keep separate accounts with the parishes affected by the levy either of a special rate or of additional items to the general rate.

L.G.A., 1933. Sect. 191 (1) of the L.G.A., 1933 (*f*), provides that all the receipts of a R.D.C. are to be carried to the general rate fund of the district and all liabilities falling to be discharged by the council are to be met out of that fund; but it is further provided by sub-sect. (2) that within this fund separate accounts are to be kept of receipts carried to and payments made out of the general rate fund in respect of (1) general expenses, and (2) each class of special expenses. A single separate account may, however, be kept of two or more classes of special expenses chargeable over the same part of the district. [130]

General and Special Expenses.—By sect. 190 (1), L.G.A., 1933 (*g*), the expenses incurred by a R.D.C. in the discharge of their functions are divided into general expenses and special expenses. Relevant receipts by the council are to be carried to the credit of the accounts of the respective classes of expenditure and any liabilities for which provision is not otherwise made is leviable by rate. Amounts leviable

- (*a*) 10 Halsbury's Statutes 916.
- (*b*) S.R. & O., 1930, No. 30.
- (*c*) S.R. & O., 1926, No. 1128.
- (*d*) 14 Halsbury's Statutes 617.
- (*e*) 10 Halsbury's Statutes 942.
- (*f*) 26 Halsbury's Statutes 410.
- (*g*) *Ibid.*

to meet liabilities in respect of general expenses are chargeable on the whole of the district ; special expenses on the part of the district chargeable separately therewith.

The various items of general expenses for which a rate levy is necessary thus constitute the general rate levied for the district.

Special expenses may be levied as additional items of the general rate in the parishes in which the expenses are chargeable or as separate special rates in those parishes.

Expenses incurred by a R.D.C. and not declared under any enactment or statutory order to be special expenses shall be general expenses.

A R.D.C. may apply to the Minister for an order, in regard to any expenses incurred by the council whether before or after the commencement of the Act, declaring such expenses to be special expenses separately chargeable on such contributory place or places specified in the order and apportioning the expenses amongst the contributory places if more than one. In any such order the Minister may direct that such special expenses shall be levied in those parts of the district as an additional item of the general rate and not by a special rate.

A R.D.C. may determine to contribute, as part of their general expenses, such sums as appear to them reasonable in or towards defraying any expenses payable as special expenses whether incurred before or after the commencement of the Act.

In this connection, also, mention should be made of the power given by sect. 57, L.G.A., 1929 (*h*), to county councils to contribute towards the expenditure of a district wholly or partly within the county in respect of works of sewerage or of water supply which would otherwise be a separate charge upon the area for which they are provided. [131]

Parish General and Parish Special Accounts.—As already mentioned the maintenance of separate accounts with constituent parishes is a feature of some complexity of the accounts of rural district councils. They are rendered necessary by (1) the division of the expenses of rural district councils into "general" and "special" expenses ; (2) the provisions of the R. & V.A., 1925 (*i*), in regard to the levy of additional sums to the general rate or the separate levy of special rates in parts of the district ; (3) the special incidence of the additional Exchequer grant ; and (4) the reform of rating in rural parishes brought about by the R. & V.A., 1925 (*k*).

In regard to (4) it is important to bear in mind that the R.D.C. became the rating authority *for the area* when the overseers of the poor were abolished. Formerly the special expenses of the R.D.C. were levied by the council by precept on the overseers ; they are now levied direct by the R.D.C. On the other hand, the expenses of rural parishes, parish councils and parish meetings, formerly levied by the overseers direct, are now included in a precept levied on the R.D.C. The general effect of the changes made in the rating of rural parishes was to preserve the partial exemption given to certain classes of property in respect of special expenses under the Acts relating to public health and to assimilate the special incidence of a rate in respect of expenditure under the Lighting and Watching Act, 1833 (*l*), to it.

(*h*) 10 Halsbury's Statutes 922.

(*i*) 14 Halsbury's Statutes 617.

(*k*) *Ibid.*

(*l*) 8 Halsbury's Statutes 1186.

The powers, already mentioned, under which county councils may contribute towards expenses in respect of sewerage and water works; rural district councils may determine to contribute as "general" expenses reasonable sums in or towards defraying expenses payable as "special" expenses; and the M.O.H. may direct that expenses payable as "special" expenses may nevertheless be levied as an additional item of the general rate, all tend to diminish the importance of the separate "special" rate levy in rural parishes. A general levelling up of the standard of services—especially public health services—in the constituent parishes of a R.D.C. might ultimately secure conditions which would permit of its abolition.

The parish "general" and "special" accounts are thus based upon a classification of net expenditure (of the R.D.C. and of the parish council or parish meeting) chargeable separately over the area of the parish, which is based, not upon the character of the expenditure, but upon the means by which it is levied upon the ratepayers of the parish. [132]

Income Tax.—The liability of a local authority to income tax being affected by the number of separate rate funds, it follows that the adjustment of the tax liability of a R.D.C. is especially complex. The complete separation of the various parochial accounts in respect of special rates operates to restrict the right of set-off of taxed profits of a R.D.C. against the liability to account for tax deductions from interest on loans, by reason of the inability of the authority, in law, to apply the profits accruing in one parish to the payment of interest charges in another. This is in accordance with the principle laid down in *Sugden v. Leeds Corporation* (m), but it appears to be anomalous when applied, for example, to the profits of a single water undertaking, provided by a R.D.C. to serve two or more parishes, so as to restrict the set-off against tax deducted from interest in respect of e.g. works of sewerage provided to serve the same parishes (both water and sewerage being special expenses). See title INCOME TAX. [133]

(m) [1914] A. C. 483; 28 Digest 74, 397.

RURAL DISTRICT COUNCILLOR

See DISTRICT COUNCILLOR.

RURAL DISTRICT COUNCILS ASSOCIATION

This Association was founded in the year 1895 and is an Association of the rural district councils of England and Wales with its offices at 191, St. Stephen's House, Victoria Embankment, Westminster, London, S.W.1, and was formed for the purposes set out in Rule II. of the Association, namely, "by complete organisation more effectually to watch over and protect the interests, rights and privileges of rural district councils as they may be affected by public bill legislation or by private bill legislation of general application to rural districts or by Orders in Council or of Government departments, and in other respects to take action in relation to any other subjects in which rural district councils may generally be interested and to promote such measures as may from time to time be deemed advisable."

The Association is under the management of an Executive Council, consisting of the President, Vice-Presidents and two representatives from each of eleven electoral divisions which are defined in the rules of the Association and they are elected biennially by the votes of the members of the Association in each electoral division.

The work of the Association is conducted by the Executive Council and the Parliamentary and General Purposes Committee which consists of twelve members elected annually by the Executive Council from amongst their number.

The Association has branches in all the counties in England, and two branches in Wales, one for North and the other for South Wales.

The membership of the Association is over 96 per cent. of the rural district councils in England and Wales; and it is thus able to express the collective opinion of rural district councils to the Government, and its various departments, either in response to requests from the Government, or by means of deputations to or conferences with the Ministers of the Crown and the Permanent Officials of the Departments.

The Association prepares and submits evidence to Royal Commissions and Departmental Committees, and also to Select Committees of both Houses of Parliament upon any matters affecting rural district councils.

The Association publishes a monthly journal called "The Official Circular" which contains the Minutes of Proceedings of the Executive Council and information including reports of law cases which are of interest to the members.

An annual meeting and annual conference is held each year in the summer and in recent years the venue has been changed from year to

year with very beneficial results, the interest in the Association being much keener now than it has ever been.

The expenses of the Association (including those of members of the Executive Council and the Parliamentary and General Purposes Committee attending meetings) are met from fixed annual subscriptions paid by the members and the Association is one of the bodies mentioned in the Local Government (Conferences) Regulations, 1934 (S.R. & O., 1934, No. 690), of the M. of H., and the expenses of councillors and officers attending meetings or conferences of the Association may be paid out of the general rate fund under sect. 267 of the L.G.A., 1933.

In legislation in recent years Parliament has empowered the Association to recommend persons for appointment to membership of bodies in which rural district councils should have representation. [134]

RURAL DISTRICT, MEDICAL OFFICER OF HEALTH OF

See MEDICAL OFFICER OF HEALTH.

RURAL INDUSTRIES

See also titles.

AGRICULTURAL COMMITTEES ;
AGRICULTURAL EDUCATION ;
AGRICULTURE ;

AGRICULTURE AND FISHERIES, MINISTRY
OF.

A specific duty in relation to rural industries is imposed on county agricultural committees by sect. 8 (4) of the M. of A. & F. Act, 1919 (a), which provides that a county agricultural committee (outside London) shall make such inquiries as appear to them to be desirable with a view to formulating schemes for the development of rural industries and social life in rural places, and for the co-ordination of action by local authorities and other bodies by which such development may be effected ; the result of such inquiries is to be reported to the M. of A. and to any local authority or body concerned ; and the expenses of such inquiries, to such amount as may be sanctioned by the M. of A. with the approval of the Treasury, are to be defrayed by the M. of A. By sect. 10 (b) the expression "rural industries" is defined as "local industries connected with agriculture."

In practice very little use has been made of the powers of sect. 8 (4) in recent years ; but in the early years of the then new system of

(a) 3 Halsbury's Statutes 455.

(b) *Ibid.*

agricultural committees, inquiries were made in many counties which led to a considerable extension of the facilities afforded by local education authorities for training in rural industry, and in some cases arrangements were made with voluntary agencies, such as rural community councils, councils of social service, and juvenile organisation committees whereby, in consideration of grants from the county council, the voluntary bodies fostered training in, and demonstrations of, improved and new processes applicable to rural life, *e.g.* the use of oxy-acetylene welding by village smiths. In appropriate cases, the cost of such grants and of direct activities of a similar nature undertaken by county councils may be charged to the higher education account or to the agricultural education account, and attracts government grant accordingly.

Advice and assistance in establishing or improving rural industries can be obtained from the Rural Industries Bureau (*c*), which is an advisory body founded in 1921, with the aid of a grant from the Development Fund; the principal government departments interested in rural industry are represented on the committee of the Bureau, and the staff of the Bureau includes expert advisers and demonstrators; pamphlets and a technical library are available. The Bureau deals with trades other than those strictly ancillary to agriculture, as well as with those which come within the somewhat narrow definition of sect. 10 (*b*); and, by stimulating the addition of other activities to the purely agricultural work of rural craftsmen, it endeavours to make it possible for those craftsmen who are essential to agriculture to continue to prosper in the changing conditions of agriculture and rural life. An important aspect of this work is the training of young craftsmen, as, failing new entrants to the trades concerned, there may be a serious shortage of skilled farriers, smiths, etc., as the older men cease to be available.

In dealing with a proposal for the improvement or establishment of a rural industry (in the wider sense adopted by the Bureau), it is necessary to decide in the first place whether to graft new forms of industry on to existing trades (*e.g.* through the production by smiths of such articles as well forged door-furniture, gates and lamp standards), or to establish new industries. In either case, the marketing prospects must be considered, because without financial help the rural craftsman cannot afford to make for stock and must be assured of a quick turnover, or of a regular flow of orders. Normally the output of a rural craftsman must sell at a comparatively high price on its merits as an article of high quality; the market therefore tends to be restricted, since competition in price with machine-made or low-priced imported goods is impossible.

In selecting a new industry for establishment, the problem of raw materials must be solved. It is necessary to avoid the cost of bringing bulky or expensive materials from a distance, and so far as possible, a new rural industry should employ local materials and should be based on a traditional local product; *e.g.* basket and hurdle making is best practised in a district where suitable willows can be grown and prepared; pottery where suitable clay and fuel can be obtained without difficulty. It is also essential that a high level of technical and artistic excellence should be secured, and that no inferior goods should be marketed. With this object, and to assist in advertising the products

(c) Inquiries should be addressed to The Director, Rural Industries Bureau, 6, Bayley Street, London, W.C.1.

of the industry, it is desirable that the promoters should register a trade mark, and should form a selling agency (preferably on co-operative lines) to control advertising and marketing; the same organisation can usefully deal with the purchase and distribution of tools and raw materials. The rules of any such organisation should be sufficiently rigid to prevent members from selling outside the organisation, and to maintain a measure of control over price-fixing.

So far as local authorities are concerned, their functions should be confined to advisory and educational work, and neither they nor their officers should engage in the commercial side of the promotion of rural industries. [185]

RURAL WORKERS, HOUSING OF

See RECONDITIONING OF HOUSES.

SAFETY PROVISIONS OF BUILDINGS AND STANDS

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See also titles :

ADVERTISEMENTS ;

BILLPOSTING ;

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RACECOURSES ;

ROAD AMENITIES ;

TREES, HEDGES AND FENCES.

Preliminary.—Among the Acts of Parliament which give local authorities control over buildings and structures, there are various provisions which specifically enable them to ensure the protection of the public from dangers that may arise in connection with certain types of buildings or structures. These statutes contemplate dangers that may arise (1) from buildings or structures that are in themselves dangerous, (2) from buildings to which the general public resort, and (3) from buildings which call for special provisions as to means of

escape in case of fire. In addition, local authorities often possess special statutory powers with regard to dangerous buildings and matters of a similar character and in dealing with problems that may arise under this title it should be ascertained whether there are any local Acts relating to the matter. For dangers arising during the construction and repair of buildings, see title BUILDING. [136]

Dangerous Buildings or Structures. *Towns Improvement Clauses Act, 1847, sect. 75.* See titles BUILDING ; DANGEROUS BUILDINGS.

P.H.A. Amendment Act, 1890.—The owners or occupiers of vaults, arches or cellars under any street, or of the houses or buildings to which they belong, must keep them in good condition and repair, and also all cellar-heads, gratings, lights, and coal-holes in the surface of any street, and all landings, flags or stones of the path or street supporting the same (b). In default, the local authority (c) may, after twenty-four hours' notice, do any necessary repairs at the expense of the owner (d) or occupier, and recover such expenses in a summary manner (e). An appeal lies to quarter sessions, unless there is an appeal to the M. of H. under P.H.A., 1875, sect. 268 (f). [137]

P.H.A. Amendment Act, 1907, sect. 30.—See titles BUILDING ; ROAD AMENITIES. Sect. 32, see titles BILLPOSTING ; BUILDING (g).

P.H.A., 1936 (h).—If it appears to a local authority (i) that any building or structure, or part thereof, is in such a condition, or is used to carry such loads, as to be dangerous (k) to persons in the building or

(b) P.H.A. Amendment Act, 1890, Part III., s. 35 (1) ; 13 Halsbury's Statutes 838. An urban authority may adopt the whole of Part III. (s. 3) ; 13 Halsbury's Statutes 824. An order of the M. of H. declaring this (s. 35 but not s. 36, *post*, p. 60), to be in force in rural districts has been made (s. 5) ; *op cit.*, 826 ; L.G.A., 1894, s. 25 (5) (repealed) ; 10 Halsbury's Statutes 795, replaced by L.G.A., 1933, s. 272 ; 26 Halsbury's Statutes 451 ; Rural District Councils (Urban Powers) Order, 1931 ; S.R. & O., 1931, No. 580 ; 24 Halsbury's Statutes 262. The consent of the county council is required before any power can be exercised under s. 35 (1).

(c) "Local authority" meant an urban or rural sanitary authority under the P.H.A. ; P.H.A. Amendment Act, 1890, s. 11 (3) ; 13 Halsbury's Statutes 827, and now means the borough council, U.D.C. or R.D.C. ; L.G.A., 1894, s. 21 ; 10 Halsbury's Statutes 792 ; L.G.A., 1933, ss. 1, 17, 31, 32, and Sched. XI., Part IV. ; 26 Halsbury's Statutes 306, 313, 320, 519. See notes to these sections of the 1933 Act in Lumley's Public Health (11th ed.), Vol. I., pp. 736, 751, 765, 766.

(d) "Owner" means the person for the time being receiving the rackrent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent ; P.H.A., 1875, s. 4 ; 13 Halsbury's Statutes 625, as applied by P.H.A. Amendment Act, 1890, s. 11 (3) ; *ibid.*, 827.

(e) P.H.A. Amendment Act, 1890, s. 6 ; 13 Halsbury's Statutes 826.

(f) *Ibid.*, s. 7 ; *ibid.*

(g) These sections are not applicable to any building (other than a dwelling-house) belonging to a railway company, or to any company or public body authorised to construct, maintain or improve a harbour, pier or dock, or to the owners of any canal or inland navigation, and used by the company, public body or owners as a part of or in connection with these undertakings ; P.H.A. Amendment Act, 1907, s. 33 ; 13 Halsbury's Statutes 923, as amended by P.H.A., 1936, s. 346, Sched. III., Part III. ; 29 Halsbury's Statutes 541, 546 ; and see P.H.A., 1936, ss. 61, 71 ; 29 Halsbury's Statutes 372, 381, replacing P.H.A. Amendment Act, 1907, s. 24 ; and P.H.A., 1875, s. 157 ; 13 Halsbury's Statutes 919, 689.

(h) S. 58 ; 29 Halsbury's Statutes 368.

(i) "Local authority" means the council of a borough or urban or rural district ; P.H.A., 1936, s. 1 (2) ; 29 Halsbury's Statutes 322 ; L.G.A., 1933, s. 1 ; 26 Halsbury's Statutes 306.

(k) It would seem that an apprehended danger is sufficient to justify action by

any adjoining building or on the premises (*l*) on which the building or structure stands or on any adjoining premises, the authority may apply (*m*) to a court of summary jurisdiction (*n*). Where the danger arises from the condition of the building or structure, the court may make an order requiring the owner (*o*) thereof to execute such work as may be necessary to obviate the danger or, if he elects, to demolish the building or structure, or any dangerous part thereof, and remove any rubbish resulting from the demolition (*p*). Where the danger arises from overloading of the building or structure the court may make an order restricting its use until a court of summary jurisdiction, being satisfied that any necessary works have been executed, withdraws or modifies the restriction (*q*). If a local authority is satisfied that a building or structure is dangerous in the manner and for the reasons above stated and that immediate action should be taken for the protection of the persons concerned, the authority may shore up or fence off the building or structure. The expenses of any action reasonably taken in this manner are recoverable from the owner (*r*).

A local authority may also apply to a court of summary jurisdiction, if it appears to the authority that any building or structure, or part thereof, is by reason of its ruinous or dilapidated condition seriously detrimental to the amenities of the neighbourhood (*s*). In such a case the court may order the owner to execute such works of repair or restoration or, if he elects, to take such steps by demolishing the building or structure or any part thereof and by removing any rubbish resulting from the demolition, as may be necessary for remedying the cause of complaint (*t*). If the owner fails to comply with any order made by the court for the execution of works, or the demolition of a building or structure or any part thereof, and the removal of any rubbish resulting from the demolition, within the time therein specified, the authority may execute the order in such manner as they think fit (*u*). The owner is liable for any expenses (*a*) reasonably so incurred by the authority, and without prejudice to the right of the authority to exercise such powers, is liable to a fine not exceeding ten pounds (*u*).

the authority even if the danger is to trespassers; see *L.C.C. v. Jones*, [1912] 2 K. B. 504; 34 Digest 591, 113, a decision on the London Building Act, 1894.

(*l*) "Premises" includes messuages, buildings, lands, easements and hereditaments of any tenure; *ibid.*, s. 343 (1); 29 Halsbury's Statutes 538.

(*m*) Such application is made by way of complaint for an order and the Summary Jurisdiction Acts apply: P.H.A., 1936, s. 300 (1) (b); 29 Halsbury's Statutes 515.

(*n*) *Ibid.*, s. 58 (1) (a); 29 Halsbury's Statutes 368.

(*o*) "Owner" means the person for the time being receiving the rackrent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if those premises were let at a rackrent. "Rackrent" in relation to any property means a rent which is not less than two-thirds of the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses (if any) necessary to maintain the same in a state to command such rent. *Ibid.*, s. 343 (1); 29 Halsbury's Statutes 538.

(*p*) *Ibid.*, s. 58 (1) (i) (a); 29 Halsbury's Statutes 368.

(*q*) *Ibid.*, s. 58 (1) (i) (b); *ibid.*

(*r*) *Ibid.*, s. 58 (3); *ibid.*, 369. See also note (*a*), *infra*.

(*s*) *Ibid.*, s. 58 (1) (b); *ibid.*, 368.

(*t*) *Ibid.*, s. 58 (1) (ii); *ibid.*

(*u*) *Ibid.*, s. 58 (2); *ibid.*, 369.

(*a*) As to recovery of expenses, *ibid.*, s. 291 *et seq.*; 29 Halsbury's Statutes 511 *et seq.*

An appeal lies to quarter sessions from any order made by a court of summary jurisdiction (b). [138]

Buildings to which the General Public Resort. *Means of Ingress and Egress.*—A local authority (c) has special powers of control under sect. 59 of the P.H.A., 1936 (d), in respect of the means of ingress and egress of the following buildings — any theatre, and any hall or other building used as a place of public resort (e); any restaurant, shop, store or warehouse to which the public are admitted and in which more than twenty persons are employed (f); any club required to be registered under the provisions of the Licensing (Consolidation) Act, 1910 (g); any school (h) not exempted from the operation of building bye-laws (i) and any church, chapel or other place of public worship unless used as such before the coming into operation of sect. 36, P.H.A. Amendment Act, 1890 (k), or the corresponding provision of a local Act (l), or where no such section or provision ever came into operation, the commencement (m) of the P.H.A., 1936 (n).

This section does not apply to a private house (o) to which members of the public are admitted occasionally or exceptionally (n).

Where plans (p) of a building, or any extension thereof, to which sect. 59 applies are, in accordance with building bye-laws (q) deposited with the local authority, the authority must reject the plans unless they show that the building, or the building as extended, will be provided with such means of ingress and egress and passages or gangways as the authority deem satisfactory, regard being had to the purpose for which the building is intended to be, or is, used and the number of persons likely to resort there at any one time (r). Any question arising

(b) P.H.A., 1936, s. 301; 29 Halsbury's Statutes 515.

(c) For definition see note (i), *ante*, p. 58.

(d) 29 Halsbury's Statutes 389.

(e) As to powers of control of theatres, cinemas and music and dancing, see titles CINEMATOGRAPHS; ENTERTAINMENTS, PROVISION OF; and THEATRES.

(f) See title SHOPS.

(g) See title CLUBS.

(h) "School" includes a Sunday or Sabbath School; P.H.A., s. 343 (1); 29 Halsbury's Statutes 588.

(i) Schools erected according to plans which have been approved by the Board of Education under any regulations relating to payment of grants are exempted from building bye-laws; Education Act, 1921, s. 166; 7 Halsbury's Statutes 211, as amended by the P.H.A., 1936, s. 71; 29 Halsbury's Statutes 381.

(k) 18 Halsbury's Statutes 838, replaced by s. 59 of the P.H.A., 1936; 29 Halsbury's Statutes 389; see note (b), *ante*, p. 58.

(l) "Local Act" includes a provisional order confirmed by Parliament and the confirming Act so far as it relates to that order; P.H.A., 1936, s. 343 (1); 29 Halsbury's Statutes 588.

(m) S. 347 (1); 29 Halsbury's Statutes 542; October 1, 1937.

(n) S. 59 (5); *ibid.*, 370.

(o) "House" means a dwelling-house, whether a private dwelling-house or not, unless the context otherwise requires; P.H.A., 1936, s. 343 (1); 29 Halsbury's Statutes 587.

(p) "Plans" includes a reference to any sections, specifications and written particulars deposited with the plans in accordance with the bye-laws; P.H.A., 1936, s. 90 (3); 29 Halsbury's Statutes 393.

(q) "Building bye-laws" means bye-laws made under Part II. of the P.H.A., 1936, with respect to buildings, works and fittings, and includes also bye-laws with respect to those matters under any corresponding enactment repealed by the Act, or under any such enactment as amended or extended by a local Act (see note (l), *supra*); *ibid.*, s. 343 (1); 29 Halsbury's Statutes 537.

(r) P.H.A., 1936, s. 59 (1); 29 Halsbury's Statutes 389, replacing P.H.A. Amendment Act, 1890, s. 36; 18 Halsbury's Statutes 838, which did not require the local authority to consider the operation of that section when dealing with plans

between a local authority and the person by whom or on whose behalf plans are deposited as to whether the means of ingress or egress or passages or gangways already existing or proposed to be provided ought to be accepted by the authority as satisfactory may, on the application of such person, be determined by a court of summary jurisdiction (*s*).

Where it appears to a local authority that any such building is not thus provided the authority must by notice (*i*) require the owner (*u*) to execute such work and make such provision as may be necessary (*a*). The provisions of Part XII. of the P.H.A., 1936, with respect to appeals against and the enforcement of notices requiring the execution of works apply in relation to any such notice (*b*).

Where the authority are satisfied that the safety of the public requires immediate action to be taken in the case of any building in respect of which they have given notice, they may apply to a court of summary jurisdiction, which may make such temporary order as it thinks fit for closing the building to, or restricting its use by, the public (*c*). The person having control of any building to which sect. 59 applies must take steps to secure that the means of ingress and egress and the passages and gangways are, while persons are assembled in the building, kept free and unobstructed, except as the authority otherwise approve, and is liable to a fine not exceeding twenty pounds in default (*d*). An appeal lies to quarter sessions from any order made by a court of summary jurisdiction (*e*). [189]

Safety of Platforms, etc.—See title BUILDING.

Buildings Subject to Special Provisions as to Means of Escape in Case of Fire.—A local authority (*f*) has certain statutory powers of control where a building exceeds two storeys in height with the floor of any upper storey more than twenty feet above the surface of the street (*g*) or ground on any side of the building and is let in flats or tenement

deposited under bye-laws made under s. 157 of the P.H.A., 1875; 18 Halsbury's Statutes 689. When plans were submitted for the erection of a cinema and the authority disapproved them on the grounds that in view of the nature and situation of the building, of the size of the streets in which it was to be erected, and of the traffic in such streets, the building would not satisfy s. 36 of the 1890 Act, a rule *nisi* for a *mandamus* to the authority to consider the plans according to law was made absolute, it being held that the authority were not entitled to refuse approval of plans on account of the narrowness of the streets and congestion of traffic, and that there must be not only a *bona fide* belief as to an infringement of the section, but reasonable grounds must be shown for that belief; *R. v. Cambridge Corpns.*, [1922] 1 K. B. 250; 86 J. P. 18; 38 Digest 188, 267. S. 59 (1) would appear to put the local authority in a stronger position, but it would seem that this case must still be borne in mind.

(*s*) P.H.A., 1936, s. 59 (1); 29 Halsbury's Statutes 369. The procedure is by way of complaint for an order and the Summary Jurisdiction Acts apply; *ibid.*, s. 300; 29 Halsbury's Statutes 515.

(*i*) As to notice, see *ibid.*, ss. 283–285; 29 Halsbury's Statutes 505, 506.

(*u*) For meaning, see note (*o*), *ante*, p. 59.

(*a*) P.H.A., 1936, s. 59 (2); 29 Halsbury's Statutes 369.

(*b*) *Ibid.* (*op. cit.* 370), and s. 290 (*op. cit.* 509).

(*c*) *Ibid.*, s. 59 (3); 29 Halsbury's Statutes 370.

(*d*) *Ibid.*, s. 59 (4); *ibid.*

(*e*) *Ibid.*, s. 301; *ibid.*, 515.

(*f*) For definition, see note (*i*), *ante*, p. 58.

(*g*) "Street" includes any highway, including a highway over any bridge, and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, P.H.A., 1936, s. 343 (1); 20 Halsbury's Statutes 539.

dwellings, or is used as an inn, hotel, boarding house, hospital (*h*) nursing home, boarding school, children's home or similar institution, or is used as a restaurant, shop, store or warehouse with sleeping accommodation on any upper floor for persons employed on the premises (*i*).

In these cases, if it appears to the local authority that any such building or proposed building is not, or will not be, provided with such means of escape in case of fire as the authority deem necessary from each upper storey as above, the authority must by notice require the owner (*k*) of the building or the person proposing to erect the building, to execute such work or make such other provision in regard to the matter as may be necessary (*l*). Where the notice requires the execution of works, the provisions of Part XII. of the P.H.A., 1936 (*m*), relating to appeals against, and enforcement of such notices will apply in relation to the notice (*n*). Where the notice requires a person to make provision otherwise than by the execution of works, such person is liable to a fine not exceeding five pounds for failure to comply with the notice and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction. In any proceedings for the recovery of such fine, it is open to the defendant to question the reasonableness of the authority's requirements (*o*). An appeal lies to quarter sessions from any order of a court of summary jurisdiction (*p*). [140]

London.—See titles listed at the commencement of this title.

(*h*) "Hospital" includes any premises for the reception of the sick, P.H.A., 1936, s. 343 (1); 29 Halsbury's Statutes 537.

(*i*) P.H.A., 1936, s. 60 (4); 29 Halsbury's Statutes 371.

(*k*) For definition of "owner," see note (*o*), *ante*, p. 59.

(*l*) P.H.A., 1936, s. 60 (1); 29 Halsbury's Statutes 371.

(*m*) *Ibid.*, s. 290; 29 Halsbury's Statutes 509.

(*n*) *Ibid.*, s. 60 (2); *ibid.*, 371.

(*o*) *Ibid.*, s. 60 (3); *ibid.*

(*p*) *Ibid.*, s. 301; *ibid.*, 515.

SALARIES OF OFFICERS

See APPOINTMENT AND DISMISSAL OF OFFICERS.

SALE OF LAND

See Compulsory Purchase of Land; Conveyancing; Disposal and Utilisation of Land.

SALMON AND TROUT FISHERIES

See also titles : Freshwater Fisheries ; Pollution of Rivers.

Salmon and trout are excluded from the definition of freshwater fish contained in the Salmon and Freshwater Fisheries Act, 1923 (*a*), but Part III. (*b*) deals with times of fishing, selling and exporting salmon and trout. By "salmon" is meant all fish of the salmon species, and the expression "trout" means any fish of the salmon family commonly known as trout, and includes "migratory trout," i.e. trout which migrate to and from the sea (*c*).

Salmon.—It is an offence (*d*) to fish for, take, kill or attempt to take or kill salmon during close seasons, that is, the periods fixed by the above Act or bye-laws made under the Act or any other Act (*e*). Where no bye-laws exist the Act fixes the following close seasons (*f*): annual close season, August 31 to February 1 ; close season for rods, October 31 to February 1 ; and for putts and putchers (*g*), from August 31 to May 1.

It is also an offence to fish for, take, kill or attempt to take or kill salmon (except with a rod and line or putts and putchers (*g*)) during the weekly close time, which, if not fixed by any bye-laws (*e*) is 6 a.m. on Saturday to 6 a.m. on Monday (*h*). There is no weekly close time for the use of putts and putchers, or rod and lines. Any bye-law made

(*a*) 8 Halsbury's Statutes 780 *et seq.*

(*b*) Ss. 26—34 ; 8 Halsbury's Statutes 795—800.

(*c*) S. 92 ; *ibid.*, 833.

(*d*) S. 26 ; *ibid.*, 795.

(*e*) E.g. under the Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), or under Acts confirming Provisional Orders made under the repealed Salmon and Freshwater Fisheries Act, 1907 (7 Edw. 7, c. 15). For saving of bye-laws under repealed Acts, see 1923 Act, s. 93 (2) ; 8 Halsbury's Statutes 834. See also s. 59, *ibid.*, 814, for power to alter the close seasons by bye-laws.

(*f*) 1923 Act, s. 26 (3), (4), (5) ; 8 Halsbury's Statutes 795.

(*g*) For definition of "putcher," see *Holford v. George* (1868), L. R. 3 Q. B. 639 (at p. 643). See also 1923 Act, s. 92 (1), "fixed engine" ; 8 Halsbury's Statutes 833.

(*h*) 1923 Act, s. 27 ; 8 Halsbury's Statutes 795.

under the Act of 1923 must fix the weekly close time at not less than forty-two or more than seventy-two hours (*i*).

The following are further offences under the 1923 Act in connection with the taking of salmon: Failure to remove, or render incapable of use, any fixed engine (*j*) for the purpose of taking salmon during close seasons and (except putts and putchers) the weekly close time (*k*); obstructing or deterring salmon from passing up a river during the annual close season and (except putts and putchers) the weekly close time (*l*); buying, selling, exposing for sale or having in one's possession for sale salmon (unless canned or preserved, or (not being an unclean (*m*) salmon) caught outside Great Britain and Northern Ireland) during the annual close season: the burden of proof lies on the buyer or seller (*n*). [141]

Trout (*o*).—It is an offence to fish for, take, kill or attempt to take or kill trout, except with a rod and line, during the annual close season (*p*) (*i.e.* that fixed by a bye-law (*q*), or if none, between August 31 and March 1 (*r*)) with a rod and line between the times fixed by a bye-law (*q*) or, failing such, between September 30 and March 1 (*s*); except with a rod and line, during the weekly close time, *i.e.* as fixed by a bye-law or failing any, between 6 a.m. on Saturday and 6 a.m. on Monday (*t*). Sect. 29 (*l*) is applied to migratory trout (*u*). Rainbow trout are excepted from those restrictions (*x*). It is also an offence to buy, sell, expose for sale or have in one's possession for sale, any trout, except for artificial propagation, stocking of waters, or for some scientific purpose (rainbow trout excepted) between August 31 and March 1 (*a*). [142]

Salmon and Trout.—The following are offences under the Act of 1923 common to both salmon and trout: exportation of unclean (*m*) fish or fish caught within prohibited times (*b*); consigning or sending fish by common or other carrier, unless the package is conspicuously marked on the outside with the word salmon or trout (*c*); between December 31 and June 25, the hanging, fixing or using of baskets, nets, traps, or devices for catching eels in waters frequented by salmon or migratory trout, or the placing in any inland water any device to catch or obstruct fish descending a river (*d*); at any time placing upon the apron of any weir any basket, trap, or device for taking fish, except

(*i*) *Ibid.*, s. 59 (1) (*c*); *ibid.*, 814.

(*j*) See note (*g*), *ante*, p. 63.

(*k*) 1923 Act, s. 28; 8 Halsbury's Statutes 796.

(*l*) *Ibid.*, s. 29; *ibid.*

(*m*) *Ibid.*, s. 92; *ibid.*, 883. "Unclean" means about to spawn, or has recently spawned and not recovered.

(*n*) *Ibid.*, s. 30; *ibid.*, 796.

(*o*) Includes char, *ibid.*, s. 92 (2); *ibid.*, 884.

(*p*) 1923 Act, s. 31 (1), (2); 8 Halsbury's Statutes 797.

(*q*) See note (*e*), *ante*, p. 63.

(*r*) 1923 Act, s. 31 (3); 8 Halsbury's Statutes 797.

(*s*) *Ibid.*, s. 31 (1) (*b*), (4); *ibid.*

(*t*) *Ibid.*, s. 31 (1) (*c*), (5); *ibid.*

(*u*) *Ibid.*, s. 31 (6); *ibid.*

(*x*) *Ibid.*, s. 31 (7); *ibid.*

(*a*) *Ibid.*, s. 32; *ibid.*, 798.

(*b*) *Ibid.*, s. 33; *ibid.*; s. 30 (1), salmon; s. 32 (trout), *supra*.

(*c*) *Ibid.*, s. 34; *ibid.*, 799.

(*d*) *Ibid.*, s. 36 (1), (2); *ibid.*, 801.

wheels or leaps for taking lamperns between August 1 and March 1 (*e*). There are further exceptions in respect of eel baskets of a prescribed size and construction, and other authorised devices (*f*). [143]

As to the power of the M. of A. to make orders (*g*) with a view to the maintenance, improvement, and development of fisheries; the formation of fishery districts and fishery boards; bye-laws and issue of licences generally, see title FRESHWATER FISHERIES, Vol. VI.

Licences to fish for salmon and trout are subject to rules in the Act of 1928 (*h*), and their number can be limited by order of the M. of A. (*i*). Provisions are made for requiring the production of licences (*k*). The use of unlicensed instruments is an offence (*l*). [144]

(*e*) 1923 Act, s. 36 (1) (b); 8 Halsbury's Statutes 801.

(*f*) *Ibid.*, s. 36 (3); *ibid.*

(*g*) *Ibid.*, s. 37; *ibid.*, as amended by Salmon and Freshwater Fisheries Act, 1935; 28 Halsbury's Statutes 74.

(*h*) S. 61; 8 Halsbury's Statutes 818.

(*i*) S. 62; *ibid.*, 820.

(*k*) S. 64; *ibid.*, 821.

(*l*) S. 63; *ibid.*

SAMPLING OF FOOD AND DRUGS

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See also titles :

ADULTERATION;
ANALYST;
ARTIFICIAL CREAM;
BUTTER, CHEESE AND MARGARINE;
CONDENSED MILK;
CREAM;

DRUGS;
IMPORTED FOOD;
INSPECTORS OF FOOD AND DRUGS;
MILK AND DAIRIES;
POISONS;
PRESERVATIVES.

Introductory.—The Food and Drugs Act, 1938 (*a*), came into operation on October 1, 1939. From that date, samples of food and drugs may be required by local authorities for the enforcement of that Act, the Merchandise Marks Act, 1926 (*b*), the Sale of Food (Weights and Measures) Act, 1926 (*c*), and the Pharmacy and Poisons Act, 1933 (*d*), as well as under various regulations relating to food under the P.H.A. (*e*). It is not deemed necessary in this title to refer in detail to the sampling provisions in statutes other than the first-mentioned. [145]

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- (*a*) 31 Halsbury's Statutes 249.
 (*b*) 19 Halsbury's Statutes 898; see title IMPORTED FOOD.
 (*c*) 20 Halsbury's Statutes 419; see title WEIGHTS AND MEASURES.
 (*d*) 26 Halsbury's Statutes 573; see title POISONS.
 (*e*) See titles CONDENSED MILK; PRESERVATIVES.

Powers to Obtain Samples.—Provision is made in sect. 68 of the Act of 1938 empowering authorised officers of any local authority, whether or not a Food and Drugs Authority, to procure samples for analysis or for bacteriological or other examination. These officers, acting under the direction of their local authority, have power to demand to be supplied with the quantity which they require of any article of food or drug exposed for sale, or on sale by retail, on any premises, or in any street or open space of public resort, on tendering the price (sect. 78 (2)). It is an offence in such circumstances to refuse to sell the sample demanded. It is provided, however, that no person shall be obliged to sell packed goods except in the unopened tins or packages in which they are contained.

Sampling officers are not precluded from instituting proceedings in respect of samples sold to some person whom they employ to make purchases on their behalf, and that procedure is frequently adopted. When samples are so procured they are deemed to have been bought by the sampling officer. Any member of the public who has purchased any article of food or drink may submit a sample to the public analyst for the area (sect. 69 (2)), who may demand in advance such fee, not exceeding one guinea, as may be fixed by the authority (sect. 69 (3)).

[146]

Sampling without Purchase.—It is not in every case necessary that samples procured for the purpose of the Act shall be paid for. If substances purporting to be butter (or cheese) are exposed for sale and are not marked "margarine" (or "margarine cheese") the sampling officer may take samples without purchase (sect. 68 (3)) and, similarly, samples of the articles mentioned may be taken from a public conveyance if they are believed to have been consigned contrary to law (sect. 68 (8)). Samples of food delivered or about to be delivered to a purchaser, consignee or consumer in pursuance of a contract of sale may be taken without payment at the place of delivery by a sampling officer in his own area, the consent of the consignee or purchaser being necessary unless the sample is one of milk (sect. 68 (7)). Samples of milk may be so taken by duly authorised officers in course of transit at any time before the milk is delivered to the consumer (sect. 68 (4)). A sampling officer may exercise his powers to obtain samples of milk outside his own area if the Food and Drug Authority of the other area has consented to such action.

Under sect. 77 of the Act any authorised officer of a local authority also has a right to enter premises for the purpose of satisfying himself whether or not the provisions of the Act are being complied with, and under sect. 68 (3) (b) such an officer may take (without purchase) samples of any food or substance capable of being used in the preparation of food found on premises so entered. This is a new statutory power which is likely to prove of great use in the control of food factories. [147]

Demand for a Particular Supply.—A question sometimes arises whether a sampling officer is entitled to insist on being supplied with a sample from a particular receptacle. It is clear that he may do so, if he is able to prove that the goods in that receptacle are on sale by retail. If the sampling officer is not known to the seller, and the seller is indisposed to sell what the officer wishes to buy, the officer should produce proof of his authority to demand a sale. In any event, before

a prosecution for refusing to sell a sample can lie, the officer must have tendered the price of the sample demanded. [148]

Formal and Informal Samples.—It is customary in many administrative areas for officers of local authorities to make unofficial purchases of samples of food with a view to learning the nature or quality of what is sold, as a preliminary to the later purchase—if this should appear desirable—of a formal sample bought under the conditions prescribed by statute. The unofficial sample, usually termed an “informal” sample, is not divided into parts, and the vendor is not informed that the sample is bought for analysis or that the purchaser is a sampling officer. Informal samples are not always submitted to a public analyst; the officer may be able to learn what he wishes to know without having an official analysis made. When a formal sample is bought for the immediate purpose of the Food and Drugs Act, with the intention that it shall be analysed by the public analyst, the sampling officer must comply strictly with the following conditions: the sampling officer must forthwith, after completion of the purchase, notify the seller (or his agent) of his intention to have the sample analysed by the public analyst, and must divide the sample into three parts, each being sufficient for analysis, which must be marked and sealed or fastened (sect. 70 (1)). The label may well contain a statement of the purpose of the purchase.

One change in the law effected by the Act of 1938 is that it is no longer a condition precedent to a prosecution to submit a sample to a public analyst; for example, when the local authority has sufficient evidence to prove its case with outrequiring a certificate of analysis. [149]

Disposal of Samples.—The sampling officer, after so dividing a purchased sample into parts must, if required to do so, deliver one part of the sample to the seller or his agent, or, as the case may be, to the occupier of the premises or the person for the time being in charge thereof. The second part of the sample is to be retained by the purchasing officer for future comparison, and the third is for submission, if the sampling officer so decides, to the public analyst. If the sample is taken in course of delivery, the first part shall be forwarded to the consignor by registered post if his name and address appear on the container. [150]

The M. of H. has given advice to local authorities, in a Memorandum (36/Foods) (revised), dated August, 1939, with regard to the collection and disposal of samples, with the object of ensuring that samples shall be adequate in quantity, fairly representative of the bulk, safeguarded against the risks of tampering, breakage or deterioration, and adequately labelled, so that the vendor shall be at no disadvantage by reason of the methods employed by the sampling officer.

The part of the sample retained by the sampling officer must be produced at the hearing of any prosecution in connection with the sale (sect. 80 (4)), and the court may, if it thinks fit, and must, if requested by either party, cause this part of the sample to be sent to the government chemist for analysis (sect. 82). The address of the government chemist is Clement's Inn Passage, Strand, London, W.C.2. Justices' clerks sending samples there should send them by registered post, with a covering letter stating the nature (but not the extent) of the adulteration alleged, any particulars necessary to facilitate the examination, and the date fixed for the further hearing of the case. The fee of two guineas should also be enclosed.

Failure to produce the third part of the sample at the hearing invalidates a prosecution, but if this part of the sample has become unfit for analysis, and is produced, the prosecution may proceed (f). [151]

Samples from Automatic Machines.—When a sample of a food or drug is purchased from an automatic machine the purchaser, if he intends to submit it to a public analyst, must deal with the sample in the same manner as if he had bought it from a shop except that the first-mentioned portion of the divided sample is to be sent by registered post or otherwise to the proprietor of the machine if that person's name and address appear thereon and, in any other case, to the occupier of the premises where the automatic machine is placed (sect. 70 (8)). [152]

Miscellaneous.—Decisions of the High Court have established the following points. A sampling officer may procure samples by deputy, and may lay an information although he did not act personally in purchasing the sample (g). Separate information may be laid in respect of separate samples (e.g. of milk) from more than one receptacle (h), or the analyst may analyse each sample from the separate receptacles of milk, and arrive at an average figure for the whole consignment of milk, one information only being laid (i). If several small packages of an article of food are purchased as one sample, it is proper to mix all the contents of the packages before dividing into three parts (k). Notification of intention to submit to analysis is not given " forthwith," if it is given two days after the purchase of the sample (l).

In certain circumstances, samples of food may be purchased by officers of the M. of A. (sects. 72, 73) and (of imported food) by officers of the Customs and Excise Department (sect. 41). With regard to imported food, samples also may be taken, under the regulations applying to preservatives, at the place of entry by officers of the Customs or of the Port Health Authority (m). [153]

(f) *Suckling v. Parker*, [1906] 1 K. B. 527; 25 Digest 103, 257; *Winterbottom v. Allwood*, [1915] 2 K. B. 608; 25 Digest 75, 50.

(g) *Horder v. Scott* (1880), 5 Q. B. D. 552; 25 Digest 76, 53; *Stace v. Smith* (1880), 45 J. P. 141; 25 Digest 71, 9; *Garforth v. Esam* (1892), 56 J. P. 521; 25 Digest 71, 10; *Tyler v. Dairy Supply Co., Ltd.* (1908), 98 L. T. 867; 25 Digest 71, 12.

(h) *Fecitt v. Walsh*, [1891] 2 Q. B. 304; 25 Digest 102, 250.

(i) *Wildridge v. Ashton*, [1924] 1 K. B. 92; 25 Digest 75, 46.

(k) *Smith v. Savage*, [1905] 2 K. B. 88; 25 Digest 75, 45; *Mason v. Cowdary*, [1900] 2 Q. B. 419; 25 Digest 74, 43.

(l) *Parsons v. Birmingham Dairy Co.* (1882), 9 Q. B. D. 172; 25 Digest 73, 31.

(m) See title MEDICAL OFFICER OF HEALTH.

SANATORIA

See TUBERCULOSIS.

SANITARY CONVENIENCES

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See also titles :

CLOSETS, CONVERSION OF ;
FACTORIES AND WORKSHOPS ;
LODGING HOUSES ;
NUISANCES SUMMARILY ABATABLE
UNDER P.H.A.

PUBLIC LAVATORIES;
PUBLIC PARKS ;
SHOPS ;
TENTS, SHEDS AND VANS.

Introduction.—The law relating to sanitary conveniences is contained mainly in the P.H.A., 1936, with several miscellaneous provisions relating to special premises, elsewhere.

The term "sanitary conveniences" means closets and urinals ; the term "closet" includes privy ; the term "earthcloset" means a closet having a movable receptacle for the reception of faecal matter and its deodorisation by the use of earth, ashes or chemicals, or by other methods ; and the term "watercloset" means a closet which has a separate fixed receptacle connected to a drainage system and separate provision for flushing from a supply of clean water either by the operation of mechanism or by automatic action (a).

This article deals with the provision of sanitary conveniences and their control by local authorities. It does not include the conversion of closet accommodation (b) ; neither does it include public conveniences (c). [154]

Provision of Sanitary Conveniences in New Buildings.—Local authorities are empowered by sect. 48, P.H.A., 1936 (d), to reject the plans of a building, unless provision is shown for sufficient and satisfactory closet accommodation, or the authority are satisfied that in any particular case they may properly dispense with the provision of

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- (a) P.H.A., 1936, s. 90 (1) ; 29 Halsbury's Statutes 392.
 - (b) See title CLOSETS, CONVERSION OF.
 - (c) See title PUBLIC LAVATORIES.
 - (d) 29 Halsbury's Statutes 358.

such accommodation. The accommodation must consist of one or more waterclosets or earthclosets, but a local authority can only insist upon a watercloset if there is a sufficient water supply and sewer available (e). In the case of a building to be used as a factory, workshop or workplace in which persons of both sexes are to be employed, separate conveniences for each sex may be required (f). Any question in dispute between the local authority and the person depositing the plans of the proposed building, may on the application of that person be determined by a court of summary jurisdiction (g).

A local authority are empowered to make bye-laws regulating, *inter alia*, sanitary conveniences (h) and the M. of H. has issued a model series of bye-laws (i) for the guidance of local authorities. Model bye-law 110 prescribes in detail the requirements relating to the construction of waterclosets; and model bye-law 112 relates to earthclosets. [155]

Sanitary Conveniences at Existing Buildings.—The provision and maintenance of proper sanitary conveniences at existing buildings is dealt with in sects. 44 and 45 of the P.H.A., 1936. Sect. 44 deals with buildings without sufficient closet accommodation or accommodation which cannot be made sufficient without reconstruction; sect. 45 deals with closets which are in an unsatisfactory state but can be repaired without reconstruction. These sections do not apply to shops to which the Shops Act, 1934 (k) applies, or to a factory or workshop; or a workplace subject to the provisions of sect. 46, P.H.A., 1936 (l). [156]

If a building is without sufficient closet accommodation, or any closets provided for or in connection with a building are in such a state as to be prejudicial to health or a nuisance and cannot without reconstruction be put into a satisfactory condition, the local authority must serve a notice (m) upon the owner of the building requiring him to provide such closets or additional closets, or such substituted closets, being in each case either waterclosets or earthclosets, as may be necessary (n).

In deciding what is "sufficient" closet accommodation, each case should be considered on its merits. It was held under the repealed sect. 36, P.H.A., 1875 (o), that a local authority had power to require the owner of a house, subject to his right of appeal, to provide a sufficient watercloset in place of an insufficient privy (p). This

(e) A building is not deemed to have a *sewer available* unless (a) there is a public sewer, or sewer which the owner of the building is entitled to use, within one hundred feet of the site of the building *and* at a level which makes it reasonably practicable to connect the drain to it, and (b) the intervening land is land through which the owner is entitled to construct a drain; and is not deemed to have a *sufficient water supply* unless it has a supply laid on or a supply can be laid on to it from a point within one hundred feet of the site of the building and the intervening land is land through which the owner is entitled to lay a communicating pipe; P.H.A., 1936, s. 90 (6); 29 Halsbury's Statutes 392.

(f) P.H.A., 1936, s. 43 (1); 29 Halsbury's Statutes 358.

(g) *Ibid.*, s. 43 (2); *ibid.*

(h) *Ibid.*, s. 61; *ibid.*, 372.

(i) Model Bye-laws—Buildings—Series IV., M. of H., 1937.

(k) 27 Halsbury's Statutes 226.

(l) 29 Halsbury's Statutes 360.

(m) The provisions of Part XII of the P.H.A., 1936; 29 Halsbury's Statutes 509, *infra*, apply with respect to appeals against, and the enforcement of, notices.

(n) P.H.A., 1936, s. 44; 29 Halsbury's Statutes 359.

(o) 18 Halsbury's Statutes 640.

(p) *Nicholl v. Epping U.D.C.* (1899), 1 Ch. 844; 38 Digest 228, 590.

decision was upheld in a further case (*q*), but the court stated that the local authority must be satisfied that the conversion of the privy to a watercloset is the only satisfactory way of making the accommodation sufficient, in addition to being satisfied that the existing privy is insufficient. [157]

Where it appears to a local authority that a closet in connection with a building is in such a state as to be prejudicial to health or a nuisance but that it is capable of being made satisfactory without reconstruction, the authority must serve a notice (*r*) upon the owner or occupier, requiring the execution of such works, or the taking of such steps by cleansing the closets or otherwise, as may be necessary (*s*). If a person fails to comply with the terms of a notice requiring the taking of steps other than the execution of works, he is liable to a penalty (*t*). [158]

Service of, Appeals against, and Enforcement of, Notices served under sects. 44 and 45, P.H.A., 1936.—Any notice served under sects. 44 or 45, *supra*, must indicate the nature of the works to be executed and state the time within which they are to be carried out (*u*). Such a notice may be signed by the clerk to the local authority, or by the surveyor, M.O.H., or sanitary inspector, or by any officer of the local authority authorised by them in writing to sign such a notice (*x*). The method of service of notices is governed by sect. 285, P.H.A., 1936 (*z*).

Every notice must state the right of appeal to a court of summary jurisdiction and the time (twenty-one days) within which it may be brought (*a*). An appeal may be lodged on the grounds that the notice is not justified by the terms of the section ; that there has been some informality, defect or error in, or in connection with, the notice ; that the authority have refused unreasonably to approve the execution of some alternative works, or that the works required are otherwise unreasonable in character or extent, or are unnecessary ; that the time specified in the notice is insufficient for the purpose ; that the notice ought to have been served upon some other person ; or, where the work is for the common benefit of the premises in question and other premises, that some other person ought to contribute towards the cost of executing the works required (*b*). If an owner fails to exercise his right of appeal under sect. 290, *supra*, he cannot raise any question respecting the notice when the local authority proceed against him for the recovery of expenses incurred by them in carrying out the work required by the notice (*c*).

Where a person is dissatisfied with the decision of a court of summary jurisdiction, he may appeal further to a court of quarter sessions, or, by agreement, the matter in dispute may be referred to an arbitrator instead of to quarter sessions (*d*).

Subject to the right of appeal referred to above, the local authority

(*q*) *Carlton Main Colliery Co., Ltd. v. Hemsworth R.D.C.*, [1922] 2 Ch. 609 ; 38 Digest 228, 591.

(*r*) See note (*m*), *ante*, p. 70.

(*s*) P.H.A., 1936, s. 45 ; 29 Halsbury's Statutes 359.

(*t*) *Ibid.*, s. 45 (3) ; *ibid.*

(*u*) *Ibid.*, s. 290 (2) ; *ibid.*, 509.

(*x*) *Ibid.*, s. 284 (1) ; *ibid.*, 505.

(*z*) 29 Halsbury's Statutes 506.

(*a*) P.H.A., 1936, s. 300 (3) ; 29 Halsbury's Statutes 515.

(*b*) *Ibid.*, s. 290 (3) ; *ibid.*, 509.

(*c*) *Ibid.*, s. 290 (7) ; *ibid.*, 510.

(*d*) *Ibid.*, s. 301 ; *ibid.*, 515.

may themselves execute the work specified on the notice, if the person upon whom the notice is served fails to do so within the time specified therein, and may recover the expenses reasonably incurred by them in so doing. Without prejudice to the right of the authority to carry out the work in default, any person who fails to comply with a notice served under sects. 44 or 45, *supra*, is liable to a penalty (e). [159]

Soilpipes.—No pipe for conveying rainwater from a roof may be used for the purpose of conveying the soil or drainage from any sanitary convenience, and the soilpipe from every watercloset must be properly ventilated. If it appears to a local authority that the above provisions are not complied with in respect of any building they may by notice require the owner or the occupier to execute such works as may be necessary to remedy the matter (f). [160]

Provision of Sanitary Conveniences at Special Premises. Factories (g).—Every factory must be provided with sufficient and suitable sanitary conveniences (h), which must be maintained (i) and kept clean, and effective provision made for lighting the conveniences. When persons of both sexes are employed, separate sanitary conveniences for persons of each sex must be provided, except in the case of factories where the only persons employed are members of the same family dwelling there (j). The provision of conveniences at new factories is governed by sect. 48, P.H.A., 1936 (k), as in the case of any new building.

The Secretary of State is empowered to make regulations determining for factories or for any class or description of factory, what is to be deemed sufficient and suitable sanitary conveniences (l), and the necessary regulations were made in 1938 (m). Under the repealed Order of 1903 (n), it was held that the justices have no right to inquire into the question of the sufficiency or suitability of the accommodation if it complied with the standard laid down in the order (o).

Where a part of a building, not being a part of a tenement factory, is let off as a separate factory, the owner of the building and not the occupier of the factory, is responsible for complying with the provisions of sect. 7, *supra*, with respect to the provision of sanitary conveniences, provided that the owner is only responsible for the cleanliness of sanitary conveniences when they are used in common by several tenants (p).

The provisions of sect. 7, *supra*, with respect to sanitary conveniences apply to building operations (q) and to works of engineering construction (r), undertaken by way of trade or business, or for the purpose

(e) P.H.A., 1936, s. 290 (6); 29 Halsbury's Statutes 510.

(f) *Ibid.*, s. 40; *ibid.*, 356.

(g) See also title FACTORIES AND WORKSHOPS.

(h) "Sanitary conveniences" includes urinals, waterclosets, earthclosets, privies, ash pits and any similar convenience; Factories Act, 1937, s. 152; 30 Halsbury's Statutes 298.

(i) "Maintained" means maintained in an efficient state, in efficient working order, and in good repair; Factories Act, 1937, s. 152; 30 Halsbury's Statutes 298.

(j) Factories Act, 1937, s. 7 (1); 30 Halsbury's Statutes 211.

(k) 29 Halsbury's Statutes 358.

(l) Factories Act, 1937, s. 7 (2); 30 Halsbury's Statutes 211.

(m) Sanitary Accommodation Regulations, 1938; S.R. & O., 1938, No. 611; 31 Halsbury's Statutes 180.

(n) Sanitary Accommodation Order, 1903; S.R. & O., 1903, No. 89.

(o) *Tracey v. Pretty* (1901), 1 Q. B. 444; 24 Digest 906, 54.

(p) Factories Act, 1937, s. 102; 30 Halsbury's Statutes 269.

(q) *Ibid.*, s. 107; *ibid.*, 274.

(r) *Ibid.*, s. 108; *ibid.*, 275.

of any industrial or commercial undertaking, and to any line or siding which is used in connection therewith, which is not part of a railway or tramway. [161]

Workplaces.—Every workplace (s) must be provided with sufficient and suitable sanitary conveniences, according to the number of the persons employed therein, and separate accommodation must be provided for each sex, if persons of both sexes are employed in the workplace (t). [162]

Shops (a).—Sanitary authorities are empowered by sect. 10 of the Shops Act, 1934 (u), to require the provision of proper sanitary accommodation in shops in which persons are employed about the business of the shop. Such accommodation must be provided *in* the shop, although a sanitary authority may grant a certificate of exemption in respect of the provision of sanitary accommodation in respect of any particular shop, but no such certificate may be granted unless the authority are satisfied that by reason of restricted accommodation or other special circumstances affecting the shop it is reasonable to do so and that suitable and sufficient sanitary accommodation is otherwise conveniently available (a). [163]

Common Lodging Houses (b).—A local authority may make bye-laws regulating common lodging houses (b) which may include clauses relating to the provision and maintenance of proper sanitary conveniences. An authority may refuse to register a common lodging house on the grounds that the sanitation of the premises is unsuitable (c). [164]

Houses Let in Lodgings (d).—Sect. 6, Housing Act, 1936 (e), empowers a local authority to make bye-laws relating to working-class houses, and sub-sect. (8) of that section enables any of such bye-laws to be limited to houses let in lodgings or occupied by members of more than one family. Bye-laws of this kind usually require the provision of adequate sanitary conveniences, and, where necessary, separate accommodation for every part of a house which is occupied as a separate dwelling. [165]

Tents, Vans and Sheds.—Any tent, van, shed or similar structure which is without proper sanitary accommodation may be dealt with under the nuisance provisions of the P.H.A., 1936 (f), as a "statutory nuisance" (g). Bye-laws may also be made with regard to the provision of sanitary conveniences for such structures (h). [166]

Inns, Refreshment Houses, etc. (i).—A local authority may by notice require the owner or occupier of any inn, public house, beer-house, refreshment house or place of public entertainment, to provide and maintain in a suitable position such number of sanitary conveniences for the use of the persons frequenting the premises as may be

(s) "Workplace" means any place in which persons are employed otherwise than in domestic service, except a factory or workshop; P.H.A., 1936, s. 343; 29 Halsbury's Statutes 539.

(t) *Ibid.*, s. 46; *ibid.*, 360.

(u) 27 Halsbury's Statutes 235.

(a) Shops Act, 1934, s. 10 (6); 27 Halsbury's Statutes 235. See also title SHOPS.

(b) P.H.A., 1936, s. 240; 29 Halsbury's Statutes 479. See also title LODGING HOUSES.

(c) *Ibid.*, s. 238; *ibid.*, 477.

(d) See also title LODGING HOUSES.

(e) 29 Halsbury's Statutes 568.

(f) S. 92 *et seq.*; 29 Halsbury's Statutes 394.

(g) *Ibid.*, s. 268; *ibid.*, 492. See also titles NUISANCES SUMMARILY ABATABLE UNDER P.H. ACTS AND TENTS, SHEDS AND VANS.

(h) P.H.A., 1936, s. 268 (4); 29 Halsbury's Statutes 492.

(i) See also title INTOXICATING LIQUORS.

reasonably necessary (j). Failure to comply with the terms of a notice served renders the person concerned liable to a penalty.

In connection with licensed premises, considerable control is exercised by the licensing magistrates and the sanitary authority should co-operate with the justices in securing sufficient and suitable sanitary accommodation for such premises. [167]

Mines.—Sect. 76, Coal Mines Act, 1911 (k), authorises the making of regulations with respect to the provision and use of sanitary conveniences in mines, both above and below ground. [168]

Motor Vehicles.—The provision of sanitary conveniences in motor vehicles is governed by the Motor Vehicles (Construction and Use) Regulations, 1937 (l), which provide that no motor vehicle or trailer registered for the first time on or after February 15, 1931, may be equipped with any closet or urinal, unless such fitting discharges into a tank carried by such motor vehicle or trailer. The tank must be properly ventilated to the external air and must contain non-inflammable and non-irritant chemicals of such character and in such quantity as to form at all times an efficient deodorant and germicide in respect of the contents of the tank. The regulations further prohibit the discharge or leakage of any contents of a tank on to a road. [169]

Nuisances Arising from Sanitary Conveniences.—Any premises in such a state as to be prejudicial to health or a nuisance, may be dealt with as a statutory nuisance in accordance with the powers contained in sect. 92, P.H.A., 1936 (m). Whilst it may be possible to deal with nuisances arising from sanitary conveniences as "statutory nuisances," it will generally be found that the procedure laid down in sects. 44 or 45 of the Act of 1936 (n) is more suitable.

Sect. 49, P.H.A., 1936 (o), prohibits the use of a room as a living room, sleeping room or workroom, if it is situated immediately over a closet, other than a watercloset or earthcloset. [170]

Examination and Testing of Sanitary Conveniences.—Where it appears to a local authority that any sanitary convenience is in such a condition as to be prejudicial to health or a nuisance, they may examine its condition and for that purpose apply a test, other than a test by water under pressure, and if necessary open the ground (oo). Special notice of intention to carry out a test or open the ground is not necessary, neither has the consent of the owner or occupier of the premises to be obtained, but a duly authorised officer is only empowered to enter premises after giving to the occupier not less than twenty-four hours' notice of his intention to do so (p). If any person obstructs an officer of a local authority in the execution of the Act he is liable to a penalty (q). [171]

Care of Sanitary Conveniences.—The occupier of every building provided with a watercloset or earthcloset is required to keep it supplied with water or dry earth or other suitable material, and

(j) P.H.A., 1936, s. 89; 29 Halsbury's Statutes 391.

(k) 12 Halsbury's Statutes 119.

(l) S.R. & O., 1937, No. 229; 30 Halsbury's Statutes 833 *et seq.*

(m) 29 Halsbury's Statutes 394.

(n) See *ante*, p. 70.

(o) 29 Halsbury's Statutes 362.

(oo) P.H.A., 1936, s. 48 (i); 29 Halsbury's Statutes 362.

(p) P.H.A., 1936, s. 287; 29 Halsbury's Statutes 507.

(q) *Ibid.*, s. 288; *ibid.*, 509.

where necessary to be properly protected against frost, and if he fails to do so he is liable to a penalty (r).

Any person who injures or improperly fouls or neglects to cleanse a convenience used in common by the members of two or more families, or causes a drain therefrom to become obstructed is liable to a penalty (s). [172]

Protection of Foodstuffs from Contamination from Sanitary Conveniences.—The occupier of every room in which meat is sold or exposed for sale or deposited for the purpose of sale or of preparation for sale or with a view to future sale, must not permit a sanitary convenience to be within such room or to communicate directly therewith, or to be otherwise so placed that offensive odours therefrom can penetrate to the room. A cistern for supplying water to such room must not be in direct communication with or directly discharge into any sanitary convenience (t).

Any room (other than a room to which the Factory and Workshops Act, 1901 (u), or any regulation made under the P.H. (Regulations as to Food) Act, 1907 (a), apply), in which food is prepared for sale, or in which food, other than food contained in receptacles so closed as to exclude the risk of contamination, is sold or is stored or kept with a view to future sale, is subject to the provisions of sect. 72, P.H.A., 1925 (b). Such provisions are similar to those detailed in the preceding paragraph relating to the protection of meat from contamination from sanitary conveniences.

Article 14 of the Milk and Dairies Order, 1926 (c), prohibits the keeping of milk in any room which, *inter alia*, communicates directly by door, window, or otherwise, with any watercloset, earthcloset or privy. [173]

London.—General provisions as to sanitary conveniences are contained in the P.H. (London) Act, 1936. A penalty is imposed for causing waterclosets, etc., to become a nuisance or injurious or dangerous to health by wilful stopping up, misuse or damage (d). Water closets must be provided in new or rebuilt houses and, on notice by a sanitary authority, in existing houses; earthclosets are permissible where water supply is not available; and waterclosets used in common by the inmates of two or more houses since before 1892 may be continued to be so used if sufficient in the opinion of the sanitary authority (e). Factories, workshops, etc., must be provided with proper and sufficient sanitary accommodation (f). The L.C.C. shall make bye-laws with respect to sanitary conveniences, etc., to be enforced by the sanitary authorities (g), and every sanitary authority shall make bye-laws with

(r) P.H.A., 1936, s. 51; 29 Halsbury's Statutes 363.

(s) *Ibid.*, s. 52; *ibid.*

(t) Art. 20 (1), Public Health (Meat) Regulations, 1924; S.R. & O., 1924, No. 1432.

(u) 8 Halsbury's Statutes 517. See now the Factories Act, 1937; 30 Halsbury's Statutes 201.

(a) *Ibid.*, 862. See now the Food and Drugs Act, 1938; 31 Halsbury's Statutes 249.

(b) 18 Halsbury's Statutes 1148. See now the Food and Drugs Act, 1938, s. 14; 31 Halsbury's Statutes 263.

(c) S.R. & O., 1926, No. 821.

(d) S. 104; 30 Halsbury's Statutes 501.

(e) S. 105; *ibid.*

(f) S. 106; *ibid.*, 502.

(g) S. 107; *ibid.*

respect to the keeping of water closets, etc., supplied with sufficient water. A sanitary authority may on notice or in cases of emergency without notice enter premises, open the ground and examine sanitary accommodation. Expenses of examination are to be borne by the sanitary authority if no fault is found, otherwise to be borne by the offender (*h*). Penalties are imposed for improperly making or altering sanitary conveniences, etc. (*i*), and for improper construction or repair of waterclosets, etc. (*k*); for injuring sanitary conveniences used in common or allowing them to get into a state amounting to a nuisance (*l*). A sanitary authority may require the removal or alteration of a sanitary convenience erected in, or accessible from, any street and which is a nuisance or offensive to public decency (*m*). A factory which is not a factory subject to the Factory and Workshop Act, 1901, is to be deemed a nuisance if not kept free from effluvia arising from any sanitary convenience (*n*). Underground rooms used as dwellings must have appurtenant to them the use of a water closet, etc. (*o*). Sect. 181 of the P.H. (London) Act, 1936 (*p*), contains provisions comparable to those of the P.H.A., 1925, sect. 72 (*q*), as to sanitary conveniences in or near premises where food is sold or kept for sale. Bye-laws may, and if required by the M. of H. shall, be made by the L.C.C. and enforced by metropolitan borough councils under sect. 6 (1) (d) and 8 (2) of the Housing Act, 1936 (*r*), in respect of sanitary accommodation in tenement houses. Bye-laws may also be made as to drainage, cleanliness and ventilation in lodging houses and tenement houses under sect. 155 of the P.H. (London) Act, 1936 (*s*), but such bye-laws are not to apply to premises to which bye-laws made or deemed by virtue of sub-sect. (2) of sect. 68 of the Housing Act, 1935, to have been made under sect. 6 of the Housing Act, 1925, (*t*) apply. The Shops Acts apply to London.

For sanitary conveniences in parks, etc., see title PUBLIC PARKS.

[174]

(*h*) S. 108; 30 Halsbury's Statutes 503.

(*i*) S. 109; *ibid.*

(*k*) S. 110; *ibid.*, 504.

(*l*) S. 111; *ibid.*

(*m*) S. 116; *ibid.*, 507.

(*n*) S. 128; *ibid.*, 515; see also title FACTORIES AND WORKSHOPS.

(*o*) S. 132; *ibid.*, 517.

(*p*) 30 Halsbury's Statutes 544.

(*q*) 13 Halsbury's Statutes 1148.

(*r*) 29 Halsbury's Statutes 568, 571.

(*s*) 30 Halsbury's Statutes 532.

(*t*) 28 Halsbury's Statutes 245; 13 Halsbury's Statutes 1006. See now Housing Act, 1936, ss. 6, 8; 29 Halsbury's Statutes 568, 571.



SANITARY INSPECTOR

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See also titles :

ASHPITS ;
 CANAL BOATS ;
 DISINFECTION ;
 DRAINS ;
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 FACTORIES AND WORKSHOPS ;
 FERTILISERS AND FEEDING STUFFS ;
 FOOD AND DRUGS ;
 HORSEFLESH, SALE OF ;
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NUISANCES SUMMARILY ABATABLE UNDER
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 SAMPLING OF FOOD AND DRUGS ;
 SANITARY CONVENiences ;
 SCAVENGING ;
 SHOPS ;
 SLAUGHTERHOUSES AND KNACKERS'
 YARDS ;
 SLUM CLEARANCE ;
 SMOKE ABATEMENT ;
 TENTS, SHEDS AND VANS.

Introduction.—The council of every borough, urban and rural district, must appoint a fit person to act as sanitary inspector (*a*).

Prior to April 1, 1922, the official designation of the sanitary inspector was "inspector of nuisances," by which title he was known in the P.H.A., 1875, and subsequent Acts, but by the P.H. (Officers) Act, 1921 (*b*), the designation was altered to "sanitary inspector." The old title of "Inspector of Nuisances" had long been a misnomer, as the duties originally performed by that officer had been extended from time to time so as to include many matters in addition to the detection and abatement of nuisances. In the early part of the nineteenth century, inspectors of nuisances were appointed by the nuisance committees formed in districts under powers contained in private local Acts, and in 1847, an inspector of nuisances was appointed for the City of Liverpool (*c*). It was not, however, until the passing of the P.H.A., 1875, that it became obligatory upon every local authority to appoint an inspector of nuisances, but by that Act every urban

(*a*) L.G.A., 1933, ss. 106, 107; 26 Halsbury's Statutes 361, 362.

(*b*) 11 & 12 Geo. 5, c. 28.

(*c*) Liverpool Sanitary Act, 1846, s. 124.

authority (*d*) and every rural authority (*e*) had to make such an appointment. Under sect. 189, P.H.A., 1875 (*d*), it was generally accepted that an urban authority could appoint one inspector only, but might also appoint officers to act as assistant inspectors. Sub-sect. (2) of sect. 2, P.H. (Officers) Act, 1921 (*f*), however, enabled an urban authority to appoint two or more sanitary inspectors.

The sanitary inspector, as one of the statutory officers of the local authority, is concerned with the administration of the public health and other Acts relating to environmental hygiene. Sanitary administration forms the basis of the present-day complicated system of public health administration, and although of less apparent importance than hitherto, the work of the sanitary inspector is of the utmost value. Unless constant attention is paid to the preservation of a satisfactory environment at home, in the factory, and elsewhere, involving questions relating to drainage, sanitation, water supply, housing, scavenging, food, etc., the general health and well-being of the community will quickly deteriorate.

The duties of the sanitary inspector are imposed upon him by statute, by regulations of the M. of H., and by the local authority. Such duties may be grouped under three main headings, viz.: General sanitation, including drainage, domestic sanitation, abatement of nuisances, sanitation of special premises (factories, workplaces, shops, lodging houses, offensive trades, canal boats, tents, vans and sheds, etc.); housing, including slum clearance, repair and reconditioning of dwelling-houses, and the abatement of overcrowding; and meat and food inspection, including the inspection of meat at the time of slaughter, inspection of other foodstuffs, food shops and premises, milk control, sampling of food and drugs, etc. [175]

There are various classes of sanitary inspectors, as follows :

(a) *Chief Sanitary Inspectors* controlling the work of other sanitary inspectors carrying out general or special duties, who are responsible for the proper administration of the various statutes, etc., relating to the work of the sanitary inspector. Much of the time of these officers is devoted to organising the work of sanitary inspection, preparing reports for the consideration of the local authority or committees thereof, conducting correspondence relating to the work of the sanitary inspectors, and dealing with matters of difficulty as they arise, either in relation to administrative procedure or sanitary practice.

(b) *Sanitary Inspectors* holding statutory appointments in the service of the smaller local authorities, where no other inspectors are employed. Such inspectors, in addition to carrying out the practical duties of a sanitary inspector, have many of the duties and responsibilities falling to the lot of chief inspectors in the larger towns, although the nature and amount of such work is proportionately less.

(c) *District, Assistant or Additional Sanitary Inspectors*.—These varying titles are applied to sanitary inspectors working under the direction and administrative control of a chief inspector. They are usually placed in charge of a ward or district, being responsible to the chief inspector for the whole of the sanitary work necessary in their particular district.

(*d*) P.H.A., 1875, s. 189; 13 Halsbury's Statutes 707.

(*e*) *Ibid.*, s. 190; 13 Halsbury's Statutes 708.

(*f*) 11 & 12 Geo. 5, c. 23.

(d) *Specialist Sanitary Inspectors.*—In some of the larger towns it is the practice to appoint sanitary inspectors to carry out special duties, to which they devote the whole of their time. Such inspectors may be appointed to deal with meat and food inspection, housing, smoke inspection, food and drugs adulteration, factories, etc. This system possesses certain advantages, especially in the large cities where it is possible to secure a greater degree of uniformity in administration over a large area, but the practice is not widespread and in the majority of local government areas, it is more satisfactory to make each officer responsible for all the duties coming within the sphere of the sanitary inspector.

(e) *Port Health Inspectors.*—Port health authorities, who are concerned with the administration at the ports of the law relating to public health, appoint sanitary inspectors whose duties are concerned mainly with the inspection of ships, food inspection, and the destruction of rats and mice on ships and dock premises.

(f) *County Sanitary Inspectors* have now been appointed by a number of county councils, to assist in the administration of certain public health matters dealt with by such councils. The work of county inspectors relates mainly to matters connected with housing in rural areas; milk control especially with respect to the licensing of producers of graded milks; and rivers pollution. At the present time, county sanitary inspectors are not statutory officers like the sanitary inspectors appointed by local authorities, but act as representatives of the county M.O.H. [176]

Qualifications.—The M. of H. may by regulations prescribe *inter alia*, the qualifications of sanitary inspectors (g) and such regulations provide that no person may be appointed as a sanitary inspector unless he is the holder of (h):

- (a) a certificate of the Royal Sanitary Institute and Sanitary Inspectors' Examination Joint Board (i); or
- (b) a certificate of the late Sanitary Inspectors' Examination Board; or
- (c) a certificate of the Royal Sanitary Institute issued before January 1, 1926.

In addition to the above statutory qualification, practically all local authorities outside London now require their sanitary inspectors to possess the certificate of the Royal Sanitary Institute as inspectors of meat and other foods. In upwards of 90 per cent. of areas meat and food inspection forms part of the normal duties of the sanitary inspectors, and at the present time, the possession of the special meat and food inspectors' certificate is obligatory in approximately 75 per cent. of new appointments. Many sanitary inspectors also hold additional qualifications relating to sanitary science and engineering, hygiene, smoke inspection, and public cleansing. [177]

Appointment.—A vacancy in the office of sanitary inspector must be filled within six months, or such longer period as the M. of H. may

(g) L.G.A., 1933, s. 108 (1); 26 Halsbury's Statutes 363.

(h) Art. 20, Sanitary Officers (Outside London) Regulations, 1935, S.R. & O., 1935, No. 1110.

(i) Full particulars of the examination for the qualifying certificate may be obtained from the Secretary to the Board, 90, Buckingham Palace Road, London, S.W.1.

in any particular case permit, after its occurrence (*j*). The appointment of a sanitary inspector is subject to the approval of the Minister in every case where a payment is made by the county council towards the salary of such officer (*k*). Before appointing a sanitary inspector, the local authority must submit to the Minister a statement, in the prescribed form, giving particulars of the appointment. After the Minister has approved the proposals, the local authority must insert an advertisement in the public press circulating in the district of the authority, at least fourteen days before the proposed appointment is to be made, stating the district for which the appointment is to be made, together with the amount of the salary and of any travelling or other allowances proposed to be assigned, and stating the address to which applications for the appointment should be sent (*l*).

A local authority cannot vary the terms of appointment of a sanitary inspector without the consent of the M. of H. (*m*). It has been held that the salary of a sanitary inspector cannot be reduced without the consent of the officer and the approval of the Minister. An agreement with an association of which the sanitary inspector is a member does not bind such officer if he opposes the terms approved by the association (*n*).

A person who is a member of a local authority or who has ceased to be a member of such an authority within twelve months, is disqualified from being appointed by that authority as a sanitary inspector (*o*).

A local authority are empowered to appoint a person as a deputy sanitary inspector for the purpose of acting in the place of the sanitary inspector when such post is vacant or the officer is unable to act (*p*). Where the appointment of sanitary inspector is subject to the approval of the M. of H., the appointment of a deputy is also subject to such approval. In the absence of a properly appointed deputy sanitary inspector, a local authority may appoint a person to act temporarily as sanitary inspector, subject to the approval of the Minister in those districts where the Minister has to sanction the appointment of a sanitary inspector (*q*). **【178】**

Tenure of Office.—Sect. 110, L.G.A., 1933 (*r*), gives security of tenure to such one of the sanitary inspectors of a local authority as the council may determine to be the senior. A senior sanitary inspector within the meaning of sect. 110, *supra*, cannot be dismissed from office without the consent of the M. of H.

Where a sanitary inspector does not devote the whole of his time to the duties of his office or to some other office held under a local authority, he may not undertake private business arising out of, or in any way connected with, the discharge of his duties as sanitary inspector (*s*). **【179】**

(*j*) L.G.A., 1933, ss. 106 (4), 107 (3); 26 Halsbury's Statutes 361, 362.

(*k*) Art. 9, Sanitary Officers (Outside London) Regulations, 1935; S.R. & O., 1935, No. 1110; L.G.A., 1933, s. 109; 26 Halsbury's Statutes 364.

(*l*) Art. 11, Sanitary Officers (Outside London) Regulations, 1935; S.R. & O., 1935, No. 1110.

(*m*) *Ibid.*, art. 29.

(*n*) *Field v. Poplar Borough Council*, [1929] 1 K. B. 750; Digest Supp.

(*o*) L.G.A., 1933, s. 122; 26 Halsbury's Statutes 371.

(*p*) *Ibid.*, s. 115; *ibid.*, 367.

(*q*) *Ibid.*, s. 116; *ibid.*, 368.

(*r*) 26 Halsbury's Statutes 364.

(*s*) Art. 23, Sanitary Officers (Outside London) Regulations, 1935; S.R. & O., 1935, No. 1110.

Remuneration.—A local authority must pay to every sanitary inspector such remuneration as may from time to time be approved by the M. of H. in every case where the authority receive a grant from the county council towards the salary of such inspector, and they may also pay a reasonable gratuity on account of extraordinary services rendered or for other special circumstances (*t*).

A sanitary inspector is prohibited from accepting any fee or reward whatsoever under colour of his office or employment, other than his proper remuneration (*u*). [180]

Protection of Sanitary Inspector.—A sanitary inspector is not liable in respect of damages arising from the *bona fide* enforcement of the P.H.A., 1875 (*a*), and 1936 (*b*).

Sect. 123, L.G.A., 1933 (*u*), requires a sanitary inspector to inform his authority if he has any pecuniary interest (whether direct or indirect) in any contract made or about to be made by the authority. An officer is deemed to have indirectly a pecuniary interest in a contract or other matter if he or any nominee of his is a member of a company or other body with which the contract is made or which has a direct pecuniary interest in the other matter under consideration; or he is a partner, or is in the employment of a person with whom such contract is made or who has a direct pecuniary interest in the other matter under consideration. Exemption is provided in respect of membership of a public body and in respect of a member of a company or other body if the sanitary inspector has no beneficial interest in any shares or stock of the company or other body. In the case of married persons living together the interest of one spouse is, if known to the other, deemed to be an interest of that other spouse (*c*). [181]

Power of Entry.—In order to carry out his duties the sanitary inspector may be authorised to enter premises, in order to make inspections and investigations. Under the P.H.A., 1936 (*d*), the sanitary inspector is, by virtue of his appointment, an “authorised officer” for the purpose of matters within his province. The Act of 1936 does not specify the matters which come within the province of the sanitary inspector, but the matters summarised in the following Table are usually dealt with by that officer. [182]

*Duties coming within the Province of the Sanitary Inspector under the
P.H.A., 1936.*

<i>Section.</i>	<i>Subject matter.</i>
38	Drainage of buildings in combination.
39	Provisions as to drainage, etc., of existing buildings.
40	Provisions as to soil pipes and ventilating shafts.
41	Notice to be given of repair, etc., of drains.
42	Alteration of drainage system.
43	Closet accommodation for new buildings.
44	Insufficient closet accommodation.
45	Defective closet accommodation.
46	Sanitary conveniences for factories, etc.

(*i*) Sanitary Officers (Outside London) Regulations, 1935, art. 25.

(*u*) L.G.A., 1933, s. 123 (2); 26 Halsbury's Statutes 371.

(*a*) P.H.A., 1875, s. 265; 18 Halsbury's Statutes 784.

(*b*) P.H.A., 1936, s. 305; 29 Halsbury's Statutes 516.

(*c*) L.G.A., 1933, s. 76; 26 Halsbury's Statutes 346.

(*d*) S. 343; 29 Halsbury's Statutes 536.

<i>Section.</i>	<i>Subject matter.</i>
47	Conversion of closet accommodation.
48	Examination and testing of drains.
49	Rooms over closets, etc., not to be used as living, sleeping or work rooms.
50	Overflowing and leaking cesspools.
51	Care of closets.
52	Care of sanitary conveniences used in common.
56	Yards and passages to be paved and drained.
72—82	Removal of refuse, scavenging, keeping of animals, etc.
83—85	Verminous premises, articles and persons.
88	Control over conveniences in, or accessible from, streets.
89	Power to require sanitary conveniences to be provided at inns, refreshment houses, etc.
91—110	Nuisances and offensive trades.
137	New houses to be provided with supply of water.
138	Power of local authority to require any occupied house to be provided with sufficient water supply.
140	Power to close, or restrict use of water from polluted source of supply.
141	Insanitary water cisterns.
154	Rag and bone dealers.
235—241	Common lodging houses.
249—255	Canal boats.
259—266	Watercourses, streams, etc.
267	Ships.
268—270	Tents, vans, sheds, fruitpickers' lodgings. [183]

An authorised officer is empowered to enter any premises at all reasonable hours :

- (a) for the purpose of ascertaining whether there is, or has been on or in connection with the premises any contravention of the provisions of the P.H.A., 1936, or of any bye-laws made thereunder, being provisions which it is the duty of the local authority to enforce ;
- (b) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the authority to take any action or execute any work, under the Act or any such bye-laws ;
- (c) for the purpose of taking any action, or executing any work authorised or required by the P.H.A., 1936, or any such bye-laws, or any order made under the Act, to be taken or executed by the authority ; and
- (d) generally for the purpose of the performance by the authority of their functions under the Act or any such bye-laws (e). [184]

A sanitary inspector is not entitled to demand entry to any premises under the P.H.A., 1936, unless :

- (a) twenty-four hours' notice has been given to the occupier, except in the case of factories, workshops and workplaces ; and
- (b) a properly authorised certificate or document is produced showing the officer's right of entry. [185]

If entry is refused after compliance with the above requirements, the sanitary inspector must make a complaint to a justice, with a view to the issue of a warrant authorising entry on to the premises in

question (f). Except in certain special circumstances, notice of intention to apply to a justice for a warrant authorising entry on to premises, must be given to the occupier of the premises prior to the making of the application. The justice must be satisfied that there are reasonable grounds for entry being necessary and it was held under the P.H. (London) Act, 1891 (g), that it was not sufficient for an officer merely to show that he was acting honestly in the discharge of his duties (h), definite evidence as to the necessity for entry for a specified purpose must be shown to exist to the justice's satisfaction. At the same time, it was not necessary for the justice to be satisfied that a statutory nuisance definitely existed. If there are reasonable grounds for suspecting the existence of the nuisance, a warrant authorising entry may be given (i). Entry may be made "at all reasonable hours." This will generally imply between the hours of 9 a.m. and 6 p.m., but it does permit entry being made outside such hours provided it is reasonable to do so for the particular purpose in view.

Where a person obstructs a sanitary inspector in the discharge of his duties he is liable to a penalty (k). It has been held that wilful obstruction need not amount to actual physical force (l). [186]

In addition to the general power of entry contained in sect. 287, there are special powers of entry in respect of the following premises :

(i.) *Canal Boats*.—An authorised officer of a local authority or port health authority may enter and examine a canal boat between the hours of 6 a.m. and 9 p.m. and may detain a boat for such period as may be necessary for the purposes of the examination (m).

(ii.) *Common Lodging-Houses*.—The keeper or other person in control of a common lodging-house must permit an authorised officer of a local authority to have free access to all parts of the house and *at all times* (n).

(iii.) *Premises, Vessels and Aircraft*.—The M. of H. may make regulations with a view to the treatment of certain diseases and for preventing the spread of such diseases, and authorised officers of a local authority may enter any premises, vessels, or aircraft for the purpose of the execution of such regulations (o). [187]

In addition to the powers of entry possessed by the sanitary inspector under the P.H.A., 1936, special powers of entry are provided to the premises detailed in the table on pp. 84-85.

Duties.—The duties of a sanitary inspector consist either of duties placed upon him by statute, or by regulations or orders of the M. of H., or under bye-laws or instructions issued by the local authority. The principal duties of the sanitary inspector are prescribed by the Minister in the Sanitary Officers (Outside London) Regulations, 1935 (p), article 27 detailing the duties to be performed. The sanitary inspector is required to carry out his duties under the general direction of the

(f) P.H.A., 1936, s. 287 (2); 29 Halsbury's Statutes 508.

(g) S. 115; 11 Halsbury's Statutes 1088; now P.H. (London) Act, 1936, s. 274; 30 Halsbury's Statutes 588.

(h) *Vines v. North London Collegiate Schools* (1899), 62 J. P. 244; 36 Digest 239, 778.

(i) *Wimbledon U.D.C. v. Hastings* (1902), 67 J. P. 45; 36 Digest 180, 245.

(k) P.H.A., 1936, s. 288; 29 Halsbury's Statutes 509.

(l) *Borrow v. Howland* (1896), 60 J. P. 391; 38 Digest 236, 652.

(m) P.H.A., 1936, s. 255; 29 Halsbury's Statutes 485. See also title CANAL BOATS.

(n) *Ibid.*, s. 241 (4); *ibid.*, 479. See also title LODGING HOUSES.

(o) *Ibid.*, s. 143; *ibid.*, 427.

(p) S.R. & O., 1935, No. 1110.

Premises.	Purpose of Entry.	Notice, if any.	Time.	Statute.
Any premises	Enforcement of P.H.A., 1936, and bye-laws made thereunder	Twenty-four hours' notice to occupier, except in the case of factories, workshops and workplaces	All reasonable hours	P.H.A., 1936, sect. 143 (4) (q).
Any premises, vessel or aircraft	Enforcement of regulations regarding infectious diseases	Not stated	Not stated	P.H.A., 1936, sect. 143 (4) (r).
Common lodging houses	Inspection of premises	None	At all times	P.H.A., 1936, sect. 241 (s).
Canal boats	Inspection of boats	None	6 a.m. to 9 p.m.	P.H.A., 1936, sect. 255 (t).
Working-class houses	Survey and examination	Twenty-four hours' written notice to occupier and owner.	At all reasonable times	Housing Act, 1936, sect. 157.
Factories	Inspection of premises	None	At all reasonable times by day and night	Factories Act, 1937, sects. 123, 128 (5) (u).
Any premises	Examination of rag flock	None	At all reasonable hours	Rag Flock Act, 1911, sect. 1 (5) (a).
Shops	Inspection of premises	None	Day or night	Shop Acts, 1934, sect. 18 (2) (b).
Any premises	Inspection of articles of food	None	At all reasonable times	Food and Drugs Act, 1938, sect. 10 (c).
Dairies	Enforcement of Milk and Dairies Order, 1926	Twenty-four hours' written notice to occupier	At all reasonable hours	Food and Drugs Act, 1938, sect. 77 (d).
Room used for preparation of food	Inspection of premises	None	do.	Food and Drugs Act, 1938, sect. 77 (d).
Butter factory	Inspection and sampling	None	do.	Food and Drugs Act, 1938, sects. 68, 77 (e).

(g) 29 Halsbury's Statutes 507. (u) 30 Halsbury's Statutes 284, 287.

(r) *Ibid.*, 428.

(s) *Ibid.*, 479.

(n) *Ibid.*, 485.

(c) 31 Halsbury's Statutes 259.

(d) *Ibid.*, 300.

(e) *Ibid.*, 294, 300.

Any premises	Inspection and sampling of foods likely to contain preservatives	None	At all reasonable hours	Public Health (Preservatives, etc., in Food) Regulations, 1927, art. 6 (1) (f).
Slaughterhouses, rooms, etc.	Inspection of premises and meat	None	do.	Public Health (Meat) Regulations, 1924, art. 4 (g); Food and Drugs Act, 1938, sect. 10 (h).
Slaughterhouses and Knackers' yards	Compliance with Act relating to slaughter of animals	None	At any time when business is, or appears to be in progress, or is usually carried on	Slaughter of Animals Act 1933, sect. 7 (i).
Premises where condensed milk is prepared, etc.	Inspection of premises and sampling	None	At all reasonable times	Public Health (Condensed Milk) Regulations, 1928, art. 6 (k).
Premises where dried milk is prepared, etc.	Inspection of premises and stamping	None	do.	Public Health (Dried Milk) Regulations, 1928, art. 6 (l).
Premises where certain poisons are sold	Inspection and sampling	None	do.	Pharmacy and Poisons Act, 1933, sect. 25 (6) (m).
Premises where fertilisers or feeding stuffs are prepared for sale, etc.	Inspection and sampling	None	do.	Fertilisers and Feeding Stuffs Act, 1926, sect. 12 (1) (n).
Premises where imported food is likely to be found	Inspection and sampling	None	At any time during the hours when the premises are open for business	Merchandise Marks Act, 1926, sect. 9 (o).

[188]

- (f) S.R. & O., 1927, No. 577.
 (g) S.R. & O., 1924, No. 1432.
 (h) 31 Halsbury's Statutes 259.
 (i) 26 Halsbury's Statutes 651.
 (k) S.R. & O., 1928, No. 509, as amended by S.R. & O., 1927, No. 1092.
 (l) S.R. & O., 1928, No. 1328, as amended by S.R. & O., 1927, No. 1093.
- (m) 26 Halsbury's Statutes 581.
 (n) 1 Halsbury's Statutes 147.
 (o) 19 Halsbury's Statutes 904.

M.O.H., and in this respect occupies a peculiar position in the local government service, being the only statutory officer of the local authority who is required to exercise the duties of his office under the general direction of another officer. The extent of the direction exercised by the M.O.H. varies considerably in different districts and depends largely upon the personal views of the officers concerned. The intention of the M. of H., as indicated by a former Chief Medical Officer (*q*), is clearly that the Chief Sanitary Inspector or Sanitary Inspector should be responsible for the detailed sanitary administration, the M.O.H. being concerned only in matters of general policy, difficulties in administration, and in the co-ordination of the whole of the public health services of the local authority.

It is impossible to refer to every duty which a local authority may require the sanitary inspector to carry out, but the following are the most important duties (*r*) :

(1) *General Sanitation*.—Atmospheric pollution, canal boats, factories and workplaces, lodging-houses, nuisances, offensive trades, rag flock, rats and mice, refuse, shops, tents, vans and sheds, and verminous premises, articles and persons.

(2) *Housing*.—Inspections, overcrowding, Rent Restriction Acts, slum clearance and unfit houses.

(3) *Food and Drugs*.—Inspections, horseflesh, milk and dairies, sampling, slaughterhouses (*rr*) and knackers' yards.

(4) *Miscellaneous*.—Agricultural produce, grading and marking, fertilisers and feeding stuffs, merchandise marks, petroleum, and pharmacy and poisons. [189]

Reports.—The sanitary inspector is required by the Sanitary Officers (Outside London) Regulations, 1935 (*s*), as soon as practicable after December 31 in each year, to furnish the M.O.H. of his district with a tabular statement showing (a) the number and nature of inspections made by him during the year ; (b) the number of notices served during the year, distinguishing statutory from other notices ; and (c) the result of the service of such notices. In practice, it is usual for the sanitary inspector to prepare a detailed annual report, which may be submitted by him directly to the local authority, or be incorporated with the annual report of the M.O.H. [190]

London.—Sanitary inspectors are appointed in London by virtue of the London Government Act, 1939 (*t*). The sanitary authorities (*i.e.* metropolitan borough councils, the City corporation and the Overseers of the Inner and Middle Temple) shall appoint an adequate number ; on report by the L.C.C. the M. of H. may, after local inquiry, require further appointments, except in the case of the Port of London (*u*). Persons appointed must be qualified by certificate of a body approved by the Minister (*w*). The duties of an inspector are to report to the sanitary authority the existence of any nuisance and to inquire into and report on complaints as to nuisances and contraventions of the Act or bye-laws thereunder ; such reports must be laid before the

(*q*) Annual Report of the Chief Medical Officer, M. of H., 1932, p. 171.

(*r*) See the particular titles set out at the commencement of this title.

(*rr*) See also the Slaughter of Animals Act, 1938 ; 26 Halsbury's Statutes 647.

(*s*) S.R. & O., 1935, No. 1110, art. 27 (18).

(*t*) S. 78 ; 32 Halsbury's Statutes 297.

(*u*) S. 96 ; *ibid.*, 305.

(*w*) S. 79 (4) ; *ibid.*, 297.

sanitary authority at their next meeting and, with the sanitary authority's order thereon, be entered in a book which must be kept for inspection by inhabitants of the district of the authority and authorised officers of the L.C.C. Particulars of complaints must also be entered in a book. It is the duty of sanitary inspectors to take, under direction of the sanitary authority, legal proceedings for offences. The sanitary authority may distribute the duties among sanitary inspectors for the district.

Under sect. 88 (a) a sanitary authority may, with the consent of the M. of H., make temporary arrangements for the discharge by other persons of the duties of sanitary inspectors.

The chief or senior inspector of a borough council or of the port health authority (the City corporation) must not be appointed for a limited period only and may not be removed except by, or with the consent of, the M. of H. (b).

The Minister may make regulations as to the duties, appointment, qualifications, tenure of office and salaries of sanitary inspectors (c). The L.C.C. must contribute to the authority by whom appointed half the salary of sanitary inspectors, but if the M.O.H. fails to send to the M. of H. the required annual reports and returns or to comply with the above provisions as to tenure of office of the chief or senior inspector, the contribution of the L.C.C. is forfeit to the Crown (d).

[191]

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- (a) 32 Halsbury's Statutes 270.
 - (b) London Government Act, 1939, s. 81 ; 32 Halsbury's Statutes 298.
 - (c) *Ibid.*, s. 79 ; *ibid.*, 297.
 - (d) *Ibid.*, s. 80 ; *ibid.*, 297.
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SAVINGS BANKS

See MUNICIPAL BANKS.

SCARLET FEVER

See INFECTIOUS DISEASES.

SCAVENGING

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*See also titles : ASHPITS ;
REFUSE ;
SNOW CLEARANCE.*

This article is confined to that branch of public cleansing concerned with the cleansing and watering of streets and pavements. For the powers and duties of local authorities regarding refuse collection and disposal, and the costing of the public cleansing service (including street cleansing and watering), see title REFUSE. For the removal of snow from streets and pavements, see title SNOW CLEARANCE.

Cleansing and Watering of Streets.—A local authority (*a*) may, and when required by the M. of H. must, undertake the cleansing of streets, and may also undertake the watering of streets, for the whole or any part of their district (*b*). It will be observed that an authority may be compelled to cleanse streets, but the watering of streets is left entirely to their discretion. A local authority are entitled to rescind a resolution by which they undertook to cleanse streets ; but if such resolution was passed in compliance with a requirement of the M. of H., the Minister's consent must be obtained before the resolution may be rescinded (*c*). The cleansing and watering of streets need not be confined to streets repairable by the inhabitants at large, and the cleansing of private streets does not affect the right of a local authority to recover private improvement expenses. Any urban authority may by agreement with any person liable to repair any street or road, or part thereof, undertake themselves the maintenance, repair, cleansing or watering of any such street or road, or part thereof, on such terms as may be agreed upon between the parties concerned (*d*).

Every road in a county which in pursuance of sect. 11, L.G.A., 1888 (*e*), as amended by Part III. of the L.G.A., 1929 (*f*), is a county

(*a*) "Local authority" means the council of a borough, U.D.C. or R.D.C. ; P.H.A., 1886, s. 1 ; 29 Halsbury's Statutes 322.

(*b*) P.H.A., 1886, s. 77 (1) ; 29 Halsbury's Statutes 385.

(*c*) *Ibid.*, s. 77 (3) ; *ibid.*, 385.

(*d*) P.H.A., 1875, s. 148 ; 13 Halsbury's Statutes 685.

(*e*) 10 Halsbury's Statutes 693.

(*f*) *Ibid.*, 903.

road, must be maintained and repaired by the county council. Where the scavenging and watering of a county road was necessary for keeping the road in repair as apart from reasons of public health and comfort, it was held to be the liability of the county council (g). There has always been some doubt as to whether the cleansing and watering of streets is a sanitary or highway matter, but the position is clarified by P.H.A., 1936, sect. 77 (2) (h), which provides for the payment by the highway authority to the local authority of such contribution for the work, regard being had to the extent to which it is or was necessary for the maintenance of the street or the safety of traffic thereon, as may be agreed upon between them, or, in case of dispute, as determined by the M. of H. A local authority may arrange for the work of cleansing or watering of streets to be carried out by the highway authority, on such terms as may be agreed (*ibid.*).

Under L.G.A., 1933, sect. 249 (i), any county or borough council may make bye-laws for the good rule and government of the county or borough, and bye-laws have been made prohibiting a person in charge of a dog in any street or public place, and having the dog on a lead, from allowing such dog to deposit its excrement upon the pavement. Under sect. 249 (5) an U.D.C. or R.D.C., within the area of a county council who have adopted a bye-law under that section, may enforce such bye-law in their district. [192]

Cleansing of Common Courts and Passages.—A local authority may sweep and cleanse any court, yard or passage which is used in common by the occupants of two or more buildings, not being a highway repairable by the inhabitants at large, where the same is not regularly and effectually swept and cleansed ; and the expenses incurred by the authority may be recovered from the occupiers of the buildings which front or abut on the court or yard, or to which the passage affords access, as may be determined by the authority, or, in case of dispute, by a court of summary jurisdiction (k). [193]

Refuse Receptacles and Litter Baskets in Public Places.—A local authority may provide receptacles in streets and public places, for the reception of refuse (l).

In districts where Part II. of the P.H.A., 1925 (m), is in force (n), a local authority may provide and maintain in or under any street, orderly bins or other receptacles, of such dimensions and in such positions as the authority may determine, for the collection and temporary storage of, *inter alia*, street refuse and waste paper (o). In providing orderly bins or other receptacles under the above provisions, an authority are not entitled to hinder the reasonable use of the street by the public or any person entitled to use the same, or to

(g) *R. v. Essex J.J.* (1888), 4 T. L. R. 676; *Burnley Corp. v. Lancs. County Council* (1889), 54 J. P. 279; *Warminster Local Board v. Wiltshire County Council* (1890), 25 Q. B. D. 450; 26 Digest 395, 1917.

(h) 29 Halsbury's Statutes 385.

(i) 26 Halsbury's Statutes 439.

(k) P.H.A., 1936, s. 78; 29 Halsbury's Statutes 386.

(l) *Ibid.*, s. 76 (1); *ibid.*, 385.

(m) 13 Halsbury's Statutes 1119.

(n) As to method of adoption of this part of the Act, see ss. 3—5; 13 Halsbury's Statutes 1116.

(o) P.H.A., 1925, s. 13 (1); 13 Halsbury's Statutes 1119.

create a nuisance to any adjacent owner or occupier (p). A local authority cannot exercise the foregoing powers in relation to any street which is a main road maintained by a county council, without the consent of the county council, or so as to obstruct or render less convenient the access to or exit from, any station or goods yard belonging to a railway company, or any premises belonging to other statutory undertakers. The local authority may not place any street bins on any bridge carrying a railway over any street or within ten feet of the abutments of any such bridge without the consent of the railway company (q). [194]

Obstruction.—Any person who wilfully obstructs any person acting in the execution of the P.H.A., 1936, is liable to a penalty (r). Wilful obstruction need not amount to actual physical force (s). [195]

Disposal of Street Refuse.—Refuse collected by a local authority in pursuance of P.H.A., 1936, sect. 77 (t), may be sold by them (u). The authority may provide places for the deposit of refuse and plant or apparatus for treating or disposing of such refuse (a). [196]

Bye-laws.—A local authority may make bye-laws for the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish (b). Such bye-laws may include, *inter alia*, the following matters relating to streets (c) :

- (a) Every person conveying any filth, dust, ashes or rubbish in or through any street shall adopt all necessary precautions to prevent its falling upon any footway or carriageway and shall, where necessary for that purpose, use a cart or carriage or other suitable vessel or receptacle properly constructed and sufficiently covered. If during conveyance any filth, dust, ashes or rubbish shall so fall he shall forthwith clean the place on which it falls.
- (b) Every person who shall convey any filth or rubbish emitting a stench through or along any street shall before and during its conveyance cause it to be covered with lime or otherwise treated so as to prevent as far as practicable the emission of stench.

As to bye-laws relating to the removal or carriage through the streets of any faecal, offensive or noxious matter or liquid, see title REFUSE. [197]

Soil or Refuse Falling Upon and Being Washed into Streets.—Where Part II. of the P.H.A., 1925 (d), is in force in a district, an urban authority may give notice to the owner or occupier of any land abutting upon any street within their district which is repairable by the inhabitants at large, requiring him, within twenty-eight days from the

(p) P.H.A., 1925, s. 13 (2); 13 Halsbury's Statutes 1119.

(q) *Ibid.*, s. 16 (1); *ibid.*

(r) P.H.A., 1936, s. 288; 29 Halsbury's Statutes 509.

(s) *Borrow v. Howland* (1896), 60 J. P. 391; 38 Digest 236, 652.

(t) See *ante*, p. 88.

(u) P.H.A., 1936, s. 76 (2); 29 Halsbury's Statutes 385.

(a) *Ibid.*, s. 76 (1); *ibid.*

(b) *Ibid.*, s. 81; *ibid.*, 387.

(c) See Model Bye-laws of the M. of II., Series II.

(d) 13 Halsbury's Statutes 1119. As to adoption of this part of the Act, see ss. 3-5; 13 Halsbury's Statutes 1116.

service of the notice, to so fence off, channel or embank the lands, as to prevent soil or refuse from such land from falling upon, or being washed or carried into the street in such quantities as will obstruct the highway or choke up a sewer or gully (*e*). This section cannot be adopted by a R.D.C., but it is in operation in all rural districts, being administered by county councils (*f*). [198]

Prevention of Water Flowing on Footpaths.—Where Part II. of the P.H.A., 1925 (*g*) is in force in a district, an urban authority may by notice require the owner of any premises abutting on a street, within twenty-eight days from the date of service of the notice, to provide such down-pipes, channels or gutters as may be necessary to prevent, so far as is reasonably practicable, surface water from the premises flowing on to, or over, the footpath of the street (*h*). This section cannot be adopted by a R.D.C., but it is in operation in all rural districts being administered by county councils (*f*). These provisions are in addition to those contained in sect. 74, Towns Improvement Clauses Act, 1847 (*i*), which requires the provision by the owner or occupier, within seven days after the service of notice, of a shoot or trough the whole length of a house or building, connected to a pipe from the roof to the ground to carry off water from the roof, in such a manner that the water will not fall upon persons passing along the street or flow over the footpath. [199]

London.—Sect. 86 of the P.H. (London) Act, 1936 (*j*), requires sanitary authorities (metropolitan borough councils, the City corporation and the Overseers of the Inner and Middle Temple) to keep all streets which are repairable by the inhabitants at large properly swept and cleansed and to remove street refuse. Failure involves a penalty not exceeding £20. A borough council may water streets and the L.C.C. may by order direct that streets in more than one borough shall, for cleansing and watering, be under the management of one borough only. "Street refuse" means dust, dirt, rubbish, mud, road scrapings, ice, snow or filth (*k*).

Under sect. 90 (*l*) a sanitary authority shall employ or contract with scavengers and may borrow for the purpose of providing premises, destructors, plant and equipment.

Under sect. 91 (*l*) no person other than the sanitary authority may remove street refuse; the street refuse becomes the property of the sanitary authority.

Provisions are contained in sect. 56 (*n*) against discharging mud, refuse, etc., into the sewers, but under sect. 61 (*o*) this is not (*i.*) to prevent a borough council from placing snow in their own sewers

(*e*) P.H.A., 1925, s. 22; 13 Halsbury's Statutes 1122. Penalty for failure, not exceeding £5 and daily penalty not exceeding £1.

(*f*) L.G.A., 1929, s. 30 (2) and Sched. I., Part I.; 10 Halsbury's Statutes 904, 975.

(*g*) See note (*d*), *ante*, p. 90.

(*h*) P.H.A., 1925, s. 21; 13 Halsbury's Statutes 1122. Penalty as under s. 22 (*supra*).

(*i*) 13 Halsbury's Statutes 554.

(*j*) 30 Halsbury's Statutes 492.

(*k*) P.H. (London) Act, 1936, s. 304; 30 Halsbury's Statutes 602.

(*l*) 30 Halsbury's Statutes 494.

(*n*) *Ibid.*, 475.

(*o*) *Ibid.*, 478.

provided that the sewer is not obstructed and solid matter is prevented from passing into L.C.C. sewers, (ii.) to authorise proceedings against the City corporation or a borough council for flushing the surface of streets which have previously been swept and cleansed. Sect. 64 (o) contains a prohibition against sweeping dirt, etc., into sewers or drains, etc.

Under sect. 84 (p) a sanitary authority shall make bye-laws for the prevention of nuisances from dust, rubbish, etc., in any street, but such bye-laws shall not make it an offence to lay sand or other material in streets in time of frost or litter or other matter to prevent the freezing of water in pipes or noise in time of sickness, if the same is laid and duly removed in accordance with the bye-laws.

The L.C.C. (General Powers) Act, 1928, sect. 33 (q), enables metropolitan borough councils to provide and maintain refuse and street orderly bins of such dimensions and in such positions as the borough council, after consultation with the metropolitan police, may determine. This power must not be used so as to hinder the reasonable use of a street or to create a nuisance to adjacent owners or occupiers. [200]

(o) 30 Halsbury's Statutes 480.
(q) 11 Halsbury's Statutes 1412.

(p) *Ibid.*, 491.

SCHEME

See AGRICULTURE; EDUCATION; HOUSING; PUBLIC ASSISTANCE; RECONSTRUCTION SCHEME; SLUM CLEARANCE; TOWN PLANNING SCHEME.

SCHOOL MANAGERS

See NON-PROVIDED SCHOOLS.

SCHOOLS, CLOSING OF

See PREVENTION OF DISEASE IN SCHOOLS.

SCILLY ISLANDS

See ISLE OF SCILLY.

SEA DEFENCE WORKS

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See also titles :

CATCHMENT BOARD ; DRAINAGE BOARD ; ESPLANADES, PROMENADES AND BEACHES ;	FLOODS ; FORESHORE ; LAND DRAINAGE ; SEASHORE.
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Introductory.—Works of sea defence comprise walls, with or without stepwork and aprons, embankments, groynes, faggot work, wave breakers and similar constructions. Such works may also be incident to the construction of docks, harbours, wharves, jetties and the like, which are generally built under the powers of a local or private Act and are outside the scope of this article.

Common Law.—There is no obligation at common law upon the owner of land abutting on the sea to construct any defences against the inroads of the sea, unless bound by his tenure to keep out the sea, but he must not interfere with or destroy a natural barrier which protects other lands outside his own (*a*). The owner of the foreshore must do nothing which interferes with the right of navigation (*b*).

The owner of lands abutting on the sea may, subject to obtaining the consents indicated in this article, erect such defences as may be necessary to protect his lands even if by so doing more water is caused to flow upon the land of adjacent owners (*c*). A private owner contemplating the erection of sea defence works would in view of the powers given by the Land Drainage Act, 1930 (*d*), to drainage boards constituted under that Act (*i.e.* Catchment Boards and Internal Drainage Boards) be well advised to consult the appropriate board before commencing works in case of possible interference with works within the jurisdiction of the board or of a contravention of bye-laws made by such board (*e*). Statutory bodies, including local authorities and boards constituted under the Land Drainage Act, 1930, deriving powers to

(*a*) 33 Halsbury (Hailsham ed.) 546; see also Land Drainage Act, 1930, s. 9, *post*, p. 95. As to the general duty of the Crown to protect the coast, see *A.-G. v. Tomline* (1880), 14 Ch. D. 58, C. A.

(*b*) 33 Halsbury (Hailsham ed.) 534.

(*c*) *R. v. Pagham, Sussex Sewers Comrs.* (1828), 6 L. J. (o. s.) K. B. 338; 41 *Digest* 57, 414.

(*d*) 23 Halsbury's Statutes 529.

(*e*) S. 47; 23 Halsbury's Statutes 563.

construct sea defence works from the Act by virtue of which they exist, may themselves own lands abutting on the sea, in which case the common law rights and obligations mentioned above would apply to the lands so owned. [201]

Commissions of Sewers.—Commissions of sewers constituted under the various Acts repealed by the Land Drainage Act, 1930, were given wide powers to erect and maintain sea defence works. These commissions have, in many cases, been superseded by boards constituted under the 1930 Act. Their powers of constructing sea defence works were contained in the Statute of Sewers (*f*) and the Sewers Amendment Act, 1933 (*g*), and could only be exercised within the jurisdiction of the Court of Sewers proposing to carry out the work (*h*), and these powers extended to the making of new walls, flood gates, etc., against the “irruption or overflowing of the sea.” [202]

Land Drainage Act, 1930.—This Act, although intituled “an Act to amend and consolidate the enactments relating to the drainage of land” authorises by means of the expressions used and defined therein the construction and maintenance of sea defence works. Sect. 81 (*i*) defines the word “drainage” as including “defence against water,” which expression includes “defence against sea water.” A drainage authority (which expression means (*k*): (1) a catchment board constituted under the Act; (2) an internal drainage board similarly constituted; or (3) any drainage board or authority deemed to be treated as having been so constituted) is, by sect. 34 (1) (c) of the Land Drainage Act, 1930, empowered to construct works “required for the drainage of the area comprised within their district.” So far as concerns the main river (*l*) and the banks and outfalls thereof, the works are exclusively within the power of a catchment board but such board may under sect. 6 (4) enter into an agreement with the council of any borough or urban district, or with any navigation authority, for such council or authority to carry out works connected with the main river which the catchment board are authorised to carry out. Sect. 6 (2) empowers a catchment board, where its area abuts on the sea or on any estuary, to construct all such works and do all such things in the sea or estuary as, in the opinion of the board, may be necessary to secure an adequate outfall for the main river.

In practice, having regard to the preceding paragraph, a doubt may arise as to whether the particular works proposed to be constructed are for the purpose of defending an outfall of a main river or to protect from the sea a particular piece of coastline, and accordingly as to whether the work is within the powers of a catchment board or an internal drainage board. It is a question of engineering fact frequently difficult to settle, whether the maintenance or preservation of a specific bank or shingle “full” is necessary to protect the outfall of a main river or to protect the coast from erosion or the hinterland from inundation. Such work might be undertaken by a catchment board in accordance with a scheme made under sect. 4 (1) (a) and (4),

(*f*) 17 Halsbury's Statutes 985.

(*g*) *Ibid.* 1000.

(*h*) S. 19, 1883 Act.

(*i*) 23 Halsbury's Statutes 582.

(*k*) Ss. 1, 81; 23 Halsbury's Statutes 529, 582.

(*l*) See ss. 5, 6, Land Drainage Act, 1930; 23 Halsbury's Statutes 534.

which, when confirmed by order of the M. of A. cannot be questioned (*m*). Alternatively, the question may be referred under sect. 6 (5) to the Minister for decision or to arbitration in the manner provided by the section.

Internal drainage boards have power under sect. 34, in view of the definitions quoted above, to construct works of sea defence within their area provided they are not works which come within the jurisdiction of the catchment board as stated above.

Having determined which board is the proper one to execute the work it is necessary for the board either to acquire (by negotiation or compulsorily) the site of the proposed works, or to obtain the consent of the owner of the site to the erection thereon of the proposed works. As to the question of title see FORESHORE. [203]

Acquisition of Land.—Land adjoining the sea may apparently have little or no value but before embarking upon a scheme of sea defence works the board should ascertain who is the owner of the soil upon which these works are to be constructed. The board does not in practice require more than permission to construct and maintain the works and the acquisition of an easement may not be necessary. Circumstances may exist, however, which would make it preferable to acquire the freehold and this may be done by agreement under sect. 45 (1) of the Land Drainage Act, 1930. Where there are many owners concerned, which is frequently the case where a sea wall is to be constructed, it is better to obtain from the M. of A. a compulsory purchase order under sect. 45 (2) of that Act. Regulations under that section have been prescribed (*n*). See title ACQUISITION OF LAND AND COMPULSORY PURCHASE.

Under the Land Clauses Consolidation Act, 1845 (*o*), and under the Acquisition of Land Act, 1919 (*p*), the works may be commenced before compensation is assessed and owing to the lands having no or only a negligible value compensation is not likely to be asked, as adjoining land would naturally improve in value by reason of the works. [204]

Commutation of Obligations.—Although by sect. 9 (1) of the Land Drainage Act, 1930 (*q*), a duty is imposed on a catchment board to take steps for the commutation of obligations imposed on persons by reasons of tenure, custom, prescription or otherwise, to do any work (whether by way of repairing of banks, maintaining of watercourses or otherwise) in connection with the main river, it should be noted that this section does not in terms impose a duty on a catchment board to commute any liability for maintaining a wall which is not in some way connected with the main river. It is not settled whether the expression "banks," defined in sect. 81 (unless the context otherwise requires), as meaning banks, walls, or embankments adjoining or confining, or constructed for the purposes of or in connection with, any channel or sea front, is applicable to the expression "banks" in sect. 9 (1) which, by reason of its context would seem to be limited to banks in connection with the main river. Accordingly, a catchment board cannot apparently enforce a commutation of a liability to maintain a sea wall which is not connected with the main river. An internal drainage board, however,

(*m*) Land Drainage Act, 1930, Sched. II., Part III., para. 3; 23 Halsbury's Statutes 588.

(*n*) S.R. & O., 1931, No. 3.

(*o*) 2 Halsbury's Statutes 1113.

(*p*) *Ibid.*, 1176.

(*q*) 23 Halsbury's Statutes 586.

under sect. 37 (1) may commute such an obligation if it is not to do work in a catchment area in connection with the main river. It should also be noted that sect. 37 (2) applies the provisions of Part II. of the Land Drainage Act, 1930 (*r*) (relating to commutation of obligations) to commutations carried out by an internal drainage board under that section. [205]

Tidal Lands.—Apart from the question of the ownership of or title to the foreshore, sect. 77 (1), proviso (b) of the Land Drainage Act, 1930 (*s*), negatives any authority to do any work on tidal lands or any lands belonging to the Crown, the Duchies of Lancaster and Cornwall, or any Government Department, without the consent of the owner of the land, and in the case of tidal lands without the consent also of the Board of Trade. In every case plans and sections must first be approved by the Board of Trade. It should be noted (sect. 77 (2)) that the expression "tidal lands" means lands below high water mark of ordinary spring tides. This is an extension of the common law meaning of foreshore which is "that ground between the ordinary high and low water mark" (*t*). It should be further noted that the expression "tidal lands" does not include lands which by means of walls, embankments or otherwise are protected from the incursion of the tides (sect. 77 (2)).

The consent of the lord of the manor, if the foreshore is appurtenant to a manor, should also be obtained. [206]

Board of Trade.—No form of application for the consent of the Board of Trade has been prescribed, but the application should be accompanied by (1) a 25-in. scale ordnance map in duplicate (not a cutting or a tracing therefrom) having marked thereon in red the exact sites of the proposed works so far as they will extend below high water mark of ordinary spring tides; (2) plans and sectional drawings in duplicate of those portions of the proposed works which will occupy tidal lands, shewing clearly the general method of construction and having delineated thereon the lines and levels of high and low water of ordinary spring tides and the levels of the foreshore (if prints are furnished they should be true to scale and in black line on strong white paper or linen); and (3) an outline specification. A small fee is sometimes asked by the Board of Trade and in other cases an agreement is entered into.

By virtue of the Harbour Act, 1814 (*u*), sect. 14, and the Harbours Transfer Act, 1862, sect. 6 (*a*), the Board of Trade may by public notice prohibit the removal of shingle which the Board consider necessary for the protection of any port, harbour or haven.

Under the Preliminary Inquiries Act, 1851, sect. 2 (*b*), and the Harbours Transfer Act, 1862, sect. 3 (*c*), the Board of Trade may require the promoters of a Bill whereby power is sought to construct any works on the seashore to deposit plans, sections, etc., and under the General Pier and Harbour Act, 1861 (*d*), the Board of Trade is given power to grant provisional orders to persons desirous of obtaining authority to construct works under that Act where the estimated expenditure exceeds £100,000. [207]

(*r*) 23 Halsbury's Statutes 557.

(*s*) *Ibid.*, 578.

(*t*) Hale, *De Jure Maris*; see title SEASHORE.

(*u*) 18 Halsbury's Statutes 42.

(*a*) *Ibid.*, 123. (*b*) *Ibid.*, 77.

(*c*) *Ibid.*, 119.

(*d*) *Ibid.*, 113.

Bye-laws.—Bye-laws may be made by a drainage board under sect. 47 of the Land Drainage Act (*e*) regulating the use and preventing the improper use of works vested in or under control of the board.

Bye-laws to be *intra vires* of a drainage board must be within the terms of sect. 47. This section, however, did not contemplate bye-laws in respect of amenity works mentioned below and to make effective regulations (*e.g.* to prevent riding, cycling, etc., on a concrete promenade, which acts might not in themselves "damage or injure" the works but would be inconvenient and possibly dangerous to the public) co-operation of the local authority is necessary. See title ESPLANADES, PROMENADES AND BEACHES. [208]

Government Grants.—Most works of sea defence are needed for the protection of agricultural land and Parliament provides financial assistance for sea defence works of this nature. Under sect. 55 of the Land Drainage Act, 1930 (*f*), grants are available out of moneys provided by Parliament towards expenditure incurred by catchment boards (but not internal drainage boards), in the improvement or construction of works of sea defence under schemes approved by the M. of A. These grants generally take the form of contributions over a period of years to the repayment of a loan which the catchment board is authorised to raise. Before a grant is made the catchment board must submit to and obtain the approval of the Minister to a scheme setting out the nature of the works, preferably supported by a report from a consulting engineer, together with an estimate of the cost. It is important that this estimate should be as accurate as possible. It should not be limited to the actual cost of the works but should include overhead charges, salaries of additional staff (whose appointment must be approved by the Minister), cost of raising loans, etc.

Regulations (*g*) have been made by the Minister under sect. 55 of the Land Drainage Act, 1930, which must be complied with, as the grant, if made, is conditional on such regulations being strictly observed. Some of the regulations extend to labour and rates of pay and in any contract to carry out works financed under a grant-aided scheme, the contract should incorporate a reference to the regulations and impose an obligation on the contractor to observe and perform them. [209]

Amenity Works.—It is frequently desirable that sea defence works besides affording protection from the sea should have an amenity or utility value, such as a promenade on a sea wall or a carriageway or coastal drive behind an embankment, or a bathing pool. The stability or durability of a sea wall is considerably increased if on the landward side a substantial waterproofed area can be incorporated with the wall. This may involve the construction of a road and if the wall is built by a board constituted under the Land Drainage Act the question arises as to whether such board can construct and maintain a road as part of the works they are empowered to erect. If the wall is to be built by a catchment board recourse may be had to sect. 6 (4) of the Land Drainage Act, 1930 (*h*), and an agreement entered into with the local authority. See also title ESPLANADES, PROMENADES AND BEACHES as to powers of local authorities in relation to sea defence works. [210]

(*e*) 23 Halsbury's Statutes 563.

(*f*) *Ibid.*, 569.

(*g*) Land Drainage (Grants to Catchment Boards) Regulations, 1931, S.R. & O., 1931, No. 296; 24 Halsbury's Statutes 439, as amended by the Land Drainage (Grants to Catchment Boards (Amendment)) Regulations, 1933, S.R. & O., 1933, No. 1077.

(*h*) 23 Halsbury's Statutes 535.

Nuisances.—The common law rule with regard to nuisances applies to sea defence works and where the public have access as of right to the scene of operations adequate safeguards and notices should be provided for their protection. The Public Authorities Protection Act, 1893 (i), would apply to an action brought to recover damages arising from such nuisances. [211]

Injury to Persons and Property.—Sect. 34 (3) of the Land Drainage Act, 1930 (j), provides that where injury is sustained by any person by reason of the exercise by a drainage board of any of its powers under that section, the board is to be liable to make full compensation to the injured person, and the amount if not settled by agreement is to be determined in the same way as compensation for land is determined under the Lands Clauses Acts. This provision covers injuries to persons as well as injuries to property.

Presumably by analogy the rule that local authorities are liable for misfeasance and not for non-feasance applies to catchment boards and internal drainage boards, but the point has yet to be decided (k). [212]

London.—There is no special provision as to coastal defence applicable to London. For provisions as to protection and warning against high tides in the Thames, see London note to title **FLOODS**. [213]

(i) 18 Halsbury's Statutes 455.

(j) 28 Halsbury's Statutes 554.

(k) See, however, *Coe v. Wise* (1866), L. R. 1 Q. B. 711; 28 Digest 55, 319.

SEA FISHERIES

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Introduction.—This article deals with the subject of sea fisheries in its relation to local government, namely "inshore fisheries" which, in general, means sea fishing carried out by the smaller sizes of craft within the territorial waters of England and Wales.

It includes matters relating to tidal waters of rivers and streams so far as concerns shell-fish.

Legislation.—Functions in relation to sea fisheries were first imposed on local authorities by the Sea Fisheries Regulation Act, 1888 (l). That

(l) 8 Halsbury's Statutes 743.

Act has been amended and extended by (i.) the Fisheries Act, 1891 (*m*), which, *inter alia*, enlarged the functions of authorities under the Act of 1888 so as to include powers under the Fisheries (Oyster, Crab, and Lobster) Act, 1877 (*n*), and of every other Act relating to sea fisheries ; (ii.) the Sea Fisheries (Shell-Fish) Regulation Act, 1894 (*o*) ; (iii.) the Board of Agriculture and Fisheries Act, 1903 (*p*), which substituted the Board of Agriculture and Fisheries for the Board of Trade for the purposes of sea fisheries ; (iv.) the Fishery Harbours Act, 1915 (*q*), as amended by the M. of T. Act, 1919, s. 2 (1) (f) ; M. of T. (Board of Trade Exception of Powers) Order, 1919 (*qq*) ; (v.) the M. of A. & F. Act, 1919 (*r*), which created the Board of Agriculture and Fisheries a Ministry ; (vi.) the Sea-Fishing Industry Act, 1938 (*s*) ; and (vii.) the Sea Fish Industry Act, 1938 (*t*), which, besides making important changes in the provisions of the Act of 1888 conferred on authorities under that latter Act functions under the Oil in Navigable Waters Act, 1922 (*u*), and further powers under the Fishery Harbours Act, 1915 (*q*). [214]

Functions of the Central Authority.—The central authority for sea fisheries as such is the M. of A. and, in so far as concerns the powers and duties of local authorities, the principal functions of the Ministry include :

- (i.) The collection and preparation of information and statistics concerning the fishing industry (*a*).
- (ii.) The conducting of inquiries, experiments and research for the purpose of promoting the fishing industry (*a*).
- (iii.) The publication of reports, with, *inter alia*, a statistical account of the fisheries, and suggestions for their regulation and improvement (*a*).
- (iv.) The making of orders creating, altering or abolishing fishery districts (*b*).
- (v.) The confirmation and revocation of bye-laws made by local fisheries committees for the regulation of inshore fisheries (*c*).
- (vi.) Convening, at least once a year, a meeting of representatives of local fisheries committees to confer with the heads of the Fishery Department and for consultative purposes on matters relating to inshore fisheries (*d*).
- (vii.) Approval of expenditure by local fisheries committees on such matters as stocking public fisheries for shell-fish (*e*) works of maintenance and improvement of small harbours (*f*), and destruction of predatory fish, birds and marine animals (*g*).

(*m*) 8 Halsbury's Statutes 750.

(*n*) *Ibid.*, 721.

(*o*) *Ibid.*, 770.

(*p*) 3 Halsbury's Statutes 408.

(*q*) 18 Halsbury's Statutes 582.

(*qq*) S.R. & O., 1919, No. 1440.

(*s*) 26 Halsbury's Statutes 147.

(*r*) 3 Halsbury's Statutes 451.

(*u*) 18 Halsbury's Statutes 804.

(*t*) 31 Halsbury's Statutes 191.

(*a*) Board of Agriculture Act, 1889, as amended by the Board of Agriculture and Fisheries Act, 1903 ; 3 Halsbury's Statutes 401, 408.

(*b*) Sea Fisheries Regulation Act, 1888, s. 1 ; 8 Halsbury's Statutes 743, and the Sea Fish Industry Act, 1938, s. 57 ; 31 Halsbury's Statutes 233.

(*c*) Sea Fisheries Regulation Act, 1888, s. 4 ; 8 Halsbury's Statutes 745, and the Sea Fish Industry Act, 1938, s. 55 ; 31 Halsbury's Statutes 233.

(*d*) Sea Fisheries Regulation Act, 1888, s. 8 ; 8 Halsbury's Statutes 747.

(*e*) Sea Fisheries (Shell Fish) Regulation Act, 1894 ; 8 Halsbury's Statutes 770.

(*f*) Fishery Harbours Act, 1915 ; 18 Halsbury's Statutes 582.

(*g*) Sea Fish Industry Act, 1938, s. 56 (1) (a) ; 31 Halsbury's Statutes 233.

The power of making orders creating, altering or abolishing fishery districts is contained in the Sea Fisheries Regulation Act, 1888 (*h*), as amended by the Sea Fish Industry Act, 1938 (*i*). Under those Acts, the M. of A. (*k*) is empowered to :

- (i.) make orders creating a sea fisheries district comprising any part of the sea within which His Majesty's subjects have, by international law, the exclusive right of fishing, either with or without any part of the adjoining coast of England and Wales ;
- (ii.) define the limits of the district ;
- (iii.) specify the area chargeable with any expenses under the Act ; and
- (iv.) provide for the constitution of a local fisheries committee for the regulation of sea fisheries carried on within the district. [215]

Local Fisheries Committees. *Land Boundaries of Fishery Areas.*—For the purposes of the administration of the Acts relating to inshore fisheries the coast of England and Wales is divided into eleven sea-fisheries districts each of which is under the control of a local fisheries committee and ten fishery districts each of which is under the control of a fishery board. In addition two authorities having jurisdiction over the harbours within their respective areas have certain powers with respect to sea fisheries.

The authorities and the land boundaries of their areas of jurisdiction are as follows :

<i>Authorities.</i>	<i>Land Boundaries.</i>
Northumberland Local Fisheries Committee	From the Boundary between England and Scotland to the southern boundary of Northumberland.
North-Eastern Local Fisheries Committee	From the southern boundary of Northumberland to Donna Nook Beacon.
Tees Fishery Board	The Tees and other rivers falling into the sea between Hardwick Hall and Skinningrove Beck above certain lines drawn at or near their mouths.
Eastern Local Fisheries Committee	From Donna Nook Beacon to northern boundary of County Borough of Yarmouth.
Suffolk and Essex Fishery Board	From Covehithe to Dovercourt.
Kent and Essex Local Fisheries Committee	From Dovercourt to Dungeness.
Colchester Borough Council	So much of Colchester Harbour as is not included within the Kent and Essex Sea Fisheries District.
Sussex Local Fisheries Committee	From Dungeness to Hayling Island Coastguard Station.

(*h*) Sea Fisheries Regulations Act, 1888 ; 8 Halsbury's Statutes 743.

(*i*) 31 Halsbury's Statutes 191.

(*k*) By the Board of Agriculture and Fisheries Act, 1903 ; 3 Halsbury's Statutes 408, powers in relation to inshore fisheries were, in general, transferred from the Board of Trade to the Board of Agriculture and Fisheries and by the M. of A. & F. Act, 1919 ; 3 Halsbury's Statutes 451, the latter Board became a Ministry.

Authorities.

Southern Local Fisheries Committee	From Hayling Island Coastguard Station to Western Boundary of Dorset.
Frome Fishery Board.	The Rivers and Estuaries between the eastern boundary of Dorset and Abbotsbury above certain lines drawn at or near their mouths.
Southampton Harbour Board	The port of Southampton.
Devon Local Fisheries Committee	Southern Section — From eastern boundary of Devon to Rame Head ; Northern Section — From Marsland Mouth to Countisbury.
Cornwall Local Fisheries Committee	From Rame Head to northern boundary of Cornwall.
Fowey Fishery Board	The rivers and estuaries between Rame Head and Peel Point, above certain lines at or near their mouths.
Camel Fishery Board	The rivers and estuaries between Peel Point and Marsland Mouth, above lines at or near their mouths.
Taw and Torridge Fishery Board	The rivers falling into the sea between Marsland Mouth and western boundary of Somerset, above lines drawn at or near their mouths.
South Wales Local Fisheries Committee	From a line across the Estuary of the Severn at Flat Holm to Cemmaes Head.
Teify Fishery Board	The rivers falling into the sea between Dinas Head and New Quay Head, above certain lines at or near their mouths.
Lancashire and Western Local Fisheries Committee	From Cemmaes Head to Haverigg Point.
Conway Fishery Board	The river Conway above certain lines at or near its mouth.
Dee Fishery Board	The Estuary of the River Dee above a line drawn from Helbre Point to the north western extremity of Helbre Island and thence to the point of Ayr Lighthouse.
Kent, Bela, Winster, Leven and Duddon Fishery Board	The estuaries of these rivers above certain lines at or near their mouths.
Cumberland Local Fisheries Committee	From Haverigg Point to Sark Foot.

It will be observed from the descriptions of the land boundaries of the areas above set out that there are certain small parts around the coasts which are not within the area of any sea-fisheries authority. The reason for this is that such parts are of no importance from a fisheries point of view. [216]

District.—The Act of 1888 requires that the limits of the district of a committee for the purposes of that Act shall be defined by the order

constituting the committee (*l*). It usually extends from high water-mark to the seaward limit of territorial waters.

In determining the area in which a local fisheries committee has jurisdiction it may be necessary or desirable to ascertain the contents of the chart or map referred to in the order which, to some extent, forms part of the order (*m*).

Stated broadly, the position is that the older orders utilise a map for the purpose of the official indication of the seaward boundary of the area, whereas those which have been made in more recent years may employ a map by way of elucidation, but that such map cannot be resorted to when ascertaining what in law constitutes the seaward boundaries of the district.

It is, however, worthy of note that by the Sea Fisheries Act, 1883 (*n*), the government of this country ratified a convention which was signed on May 6, 1882, the purpose of which was to regulate the policing of the fisheries in the North Sea outside territorial waters. The High Contracting Parties to the convention were Great Britain and Ireland, Germany, Belgium, Denmark, France and the Netherlands. By that convention it is provided that the fishermen of each country concerned in the convention shall enjoy the exclusive right of fishery within the distance of three miles from low water mark along the whole extent of the coasts of their respective countries as well as of the dependent islands and banks. The convention further provided that, as regards bays, the distance of three miles was to be measured from a straight line across the bay in the part nearest the entrance at the first point where the width does not exceed ten miles. For the purpose of the convention, miles are geographical miles whereof sixty make one degree of latitude.

The duty of enforcing the provisions of the Act of 1883 is placed upon sea-fishery officers. A sea-fishery officer is defined as every officer of or appointed by the Board of Trade, every commissioned officer of the Navy on full pay, every officer duly authorised by the Admiralty, a British consular officer, a collector and principal officer of customs and every officer of customs authorised by the Commissioner of Customs, a divisional officer of the coastguard and every principal officer of a coastguard station.

By the Fisheries Act, 1891 (*o*), however, a local fisheries committee appointed in pursuance of the Act of 1888 may, within its district, enforce the provisions of the Fisheries (Oyster, Crab and Lobster) Act, 1877, and of every other Act relating to sea fisheries (*p*).

For the purposes of enforcing an order made in respect of immature fish pursuant to the Sea-Fishing Industry Act, 1933, sect. 4, as substituted by the Sea Fish Industry Act, 1938, sect. 38 (*q*) and only for that purpose, the district of a committee is deemed to extend throughout the area of any council liable to pay or contribute towards the expenses of the committee with the exception that the enforcing of the provisions of such an order by a committee or its officers are not exercisable in respect of matters arising within the limits of a market

(*l*) Sea Fisheries Regulation Act, 1888, s. 1 (1) (b); 8 Halsbury's Statutes 748.

(*m*) *Cundy v. Brooks*, 1896, an unreported High Court case. See Annual Report of the Kent and Essex Sea Fisheries Committee, 1930, p. 5.

(*n*) 8 Halsbury's Statutes 725.

(*o*) S. 9; *ibid.*, 752.

(*p*) *Ibid.*, 721.

(*q*) 31 Halsbury's Statutes 223.

under the control of a county borough or county district council (*r*).

[217]

Constitution.—The local fisheries committee for a sea-fisheries district is a committee of a county council or borough council, or, if two or more such councils are interested, a joint committee of those councils as may be provided for in the order creating the district (*s*).

The committee must include additional members to represent specific interests who are appointed by bodies other than the council or constituent councils as the case may be (*s*). By the Sea Fish Industry Act, 1938, the additional members appointed to represent specific interests must include one person appointed by each Fishery Board having jurisdiction within the district of the committee, and other persons acquainted with the needs and opinions of the fishing interests of the district. These latter persons are appointed by the Minister of Agriculture and Fisheries. The total number of the additional members must not exceed the number of members required to be appointed by the council or constituent councils as the case may be (*s*). The term of office of any person who became a member of a local fisheries committee on or after April 1, 1940, expires not later than the end of the triennial period in which he takes office (*t*). "Triennial period" means a period of three years commencing on April 1, 1940, and with every third anniversary of that day. On and from April 1, 1940, so much of any order as relates to the appointment of additional members of a committee, or a term of office of members of a committee, ceased to have effect (*u*).

An order creating a sea-fisheries district is made on the application of a county council or a borough council, and the Minister of Agriculture and Fisheries is empowered to vary or revoke an order on the application of such a council or on the application of the local fisheries committee concerned. In the latter case he must consult with the appropriate county or borough council before making a varying or revoking order (*a*).

Every order must be laid before both Houses of Parliament while in session for a period of thirty days and if either House during that period resolves that the whole or any part of the order ought not to be in force such order or part thereof ceases to have effect. Subject to any such resolution, an order so made comes into force at the expiration of the thirty days (*b*).

If twenty inhabitant ratepayers interested in sea fisheries apply to a county council or borough council for the creation of a sea-fisheries district and such council refuses or neglects to make an appropriate application to the Minister of Agriculture and Fisheries within six months from the date of application, those ratepayers are entitled, within a period of twelve months, themselves to apply to the Ministry for an order. Thereupon the Minister is required to proceed as if an application had been made by the council or councils as the case may be unless such councils show to the satisfaction of the Minister that an order should not be made (*c*).

(*r*) Sea Fishing Industry Act, 1938, s. 4 (6), as substituted by the Sea Fish Industry Act, 1938, s. 38; 31 Halsbury's Statutes 223.

(*s*) Sea Fisheries Regulation Act, 1888, s. 1 (2); 8 Halsbury's Statutes 743, as amended by the Sea Fish Industry Act, 1938, s. 51; 31 Halsbury's Statutes 233.

(*t*) *Ibid.*, s. 51 (8); *ibid.*, 281.

(*u*) *Ibid.*, s. 51 (4); *ibid.*

(*a*) Sea Fisheries Regulation Act, 1888, s. 1; 8 Halsbury's Statutes 743, as amended by the Sea Fish Industry Act, 1938, s. 57; 31 Halsbury's Statutes 230.

(*b*) Sea Fisheries Regulation Act, 1888, s. 1 (4); 8 Halsbury's Statutes 743.

(*c*) *Ibid.*, s. 1 (5); *ibid.*, 744.

The Minister must cause a draft of every order proposed to be made to be published locally and, if there are objections, he must cause a local inquiry to be held. Notice of an inquiry must be given by advertisement or otherwise and, if an order is to be made, the report of the person holding the inquiry must be laid with the order before both Houses of Parliament (d).

The law relating to committees and joint committees of county councils applies to a local fisheries committee, subject to the provisions of the order constituting a committee (e).

If a proposed sea-fisheries district will adjoin or overlap the district of a board of salmon conservators, the Minister of Agriculture and Fisheries must, by the order defining the limits of the sea-fisheries district, draw a line at or near the mouth of every river or stream flowing into the sea, or into any estuary within those limits, or at the option of the Minister at or near the mouth of any estuary within those limits. The sea-fisheries district cannot then extend into any such river or stream. The order may, however, confer upon the board of salmon conservators the powers of a local fisheries committee so far as concerns such river, stream or estuary (f).

Local fisheries committees have no jurisdiction within any area for the time being subject to a bye-law under the Salmon and Freshwater Fisheries Act, 1928 (g). [218]

Functions.—A local fisheries committee is empowered to make bye-laws :

- (1) Restricting or prohibiting any method of fishing for sea-fish or the use of any instrument for fishing (h).
- (2) Determining the size of mesh, form and dimensions of any fishing instrument used for sea-fish (h).
- (3) Restricting or prohibiting the fishing for, or taking of, such kinds of sea-fish as may be specified and during such period as may be laid down under a bye-law (i).
- (4) Constituting a district for oyster cultivation for the purposes of the Fisheries (Oyster, Crab and Lobster) Act, 1877, sect. 4 (k).
- (5) Directing that the proviso to sect. 8 of the above-mentioned Act of 1877 shall not apply. That proviso permits edible crabs of the kinds specified in sect. 8 to be taken by, or be in possession of, a person if such crabs are intended for bait for fishing (l).
- (6) Prohibiting or regulating the deposit or discharge of any solid or liquid substance detrimental to sea-fish or sea fishing (m).

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Committees also have bye-law making powers with respect to shell-fish (n) for which purpose the bye-laws may provide, amongst other things, for :

- (i.) fixing the sizes and condition at which shell-fish may not be removed and the method of determining such sizes;

(d) Sea Fisheries Regulation Act, 1888, s. 1 (6); 8 Halsbury's Statutes 744.

(e) *Ibid.*, s. 1 (3); *ibid.*, 743, as amended by the L.G.A., 1933, s. 307, 11th Sched., Part IV.; 26 Halsbury's Statutes 469, 526.

(f) Sea Fisheries Regulation Act, 1888, s. 12 (1); 8 Halsbury's Statutes 748.

(g) *Ibid.*, s. 12 (3); *ibid.*, 748.

(h) *Ibid.*, s. 2 (1) (a); *ibid.*, 744.

(i) Fisheries Act, 1891, s. 7; *ibid.*, 752.

(k) 8 Halsbury's Statutes 721; Sea Fisheries Regulation Act, 1888, s. 2 (1) (b); *ibid.*, 744.

(l) *Ibid.*, 723; *ibid.*, s. 2 (1) (c); *ibid.*, 744.

(m) *Ibid.*, s. 2 (1) (e); *ibid.*, 745.

(n) Sea Fisheries (Shell Fish) Regulation Act, 1894, s. 1 (1); *ibid.*, 770.

- (ii.) imposing an obligation to redeposit in specified localities any shell-fish, the removal (*o*) or possession of which is prohibited under any Act of Parliament ;
- (iii.) protecting shell-fish laid down for breeding purposes ;
- (iv.) protecting culch and other material for the reception of spat, otherwise known as the spawn or young, of any kinds of shell-fish ; and
- (v.) imposing an obligation to redeposit such culch and other material in specified localities.

Sea-fish means fish of all kinds found in the sea and includes lobsters, crabs, shrimps, prawns, oysters, mussels, cockles and other kinds of crustaceans and shell-fish (*p*). It includes all kinds of molluscs and crustaceans (*q*), but does not include fish of the salmon species or migratory trout (*r*).

A local fisheries committee is empowered to stock or restock any public fishery for shell-fish, subject to the expenditure thereon being sanctioned by the Minister of Agriculture and Fisheries (*s*). [220]

By the Sea Fish Industry Act, 1938, the functions of a local fisheries committee are extended so as to enable such a committee (*t*) :

- (1) With the approval of the Minister of Agriculture and Fisheries and subject to such conditions as he may impose, to incur expenditure for the destruction of fishery pests so far as the destruction of such pests appears to the committee to be desirable for the preservation and improvement of the fisheries within its district and if it is not illegal under any other Acts. [221]
- (2) To contribute to the cost of works of maintenance or improvement of small harbours situate wholly or partly within the committee's district provided such harbours are, in the opinion of the Minister of Agriculture and Fisheries, principally used by persons engaged in the sea-fishing industry. For the purposes of the Fishery Harbours Act, 1915, "harbour" includes any haven, cove or other landing-place and "works" include slipways, capstans, and other works facilitating the landing, launching or beaching of vessels in any harbour (*u*). [222]
- (3) Where duly authorised a committee may institute proceedings for any offence under the Oil in Navigable Waters Act, 1922. That Act makes provision against the discharge or escape of oil into navigable waters. By a general direction issued by the M. of A. on November 9, 1938 (*a*), committees were authorised under sect. 7 (4) of the Act of 1922 (*b*) to institute proceedings for offences under the Act. [223]

(*o*) As to what constitutes "removal," see *Thomson v. Burns*, 76 L. T. 58; 61 J. P. 84; and *Thomson v. Burns* and *Thomson v. Hartley*, 66 L. J. (Q. B.) 176.

(*p*) Sea Fisheries Regulation Act, 1888, s. 14; 8 Halsbury's Statutes 749.

(*g*) Sea Fisheries (Shell Fish) Regulation Act, 1894, s. 1 (3); *ibid.*, 771.

(*r*) Sea Fisheries Regulation Act, 1888, s. 14, *supra*, as amended by the Sea Fish Industry Act, 1938, s. 52.

(*s*) Sea Fisheries (Shell Fish) Regulation Act, 1894, s. 1 (2); 8 Halsbury's Statutes 770.

(*t*) Sea Fish Industry Act, 1938, s. 56.; 31 Halsbury's Statutes 233.

(*u*) Fishery Harbours Act, 1915, s. 2 (4); 18 Halsbury's Statutes 583.

(*a*) S.R. & O., 1821, November 9, 1938.

(*b*) 18 Halsbury's Statutes 807.

Local fisheries committees must, if so required by the Minister of Agriculture and Fisheries, collect such statistics relating to sea fisheries, and make such returns as to their proceedings, as the Minister may reasonably require. Any expenditure incurred in regard to the collection of statistics is borne out of Exchequer funds (c). [224]

By reason of their functions in relation to inshore fishing, local fishery committees are concerned in the activities of the white fish commission and the making of co-operative schemes for persons carrying on the business of a home producer of white fish. Such commission and scheme are provided for in the Sea Fish Industry Act, 1938, Part I.

For the purposes of the Act of 1938, "white fish" means (d) fish of any kind found in the sea other than herring, fish of the salmon species, and migratory trout. It includes shell-fish. [225]

A co-operative scheme can be instituted where the commission is satisfied that no useful purpose would be served by the application of a marketing scheme and that measures should be taken to promote co-operation between home producers of white fish in the marketing of such fish (e). A co-operative scheme must be submitted to the Minister of Agriculture and Fisheries who requires to be satisfied that the scheme is likely to promote efficiency or economy in the production and marketing of white fish or to increase the demand for white fish and is desirable in the public interest (f). The Minister must also be satisfied that there is a preponderating opinion in favour of confirmation of the scheme among the persons of the class whose interests are to be represented on the body to be constituted under the scheme (f). [226]

Bye-Laws. Procedure for Making.—A bye-law cannot be made unless the notice convening the meeting at which it is proposed to make a bye-law has stated the intention to propose the bye-law and the terms thereof. A copy of the notice must be served by post or otherwise on each member of the committee at least fourteen days before the date of the meeting and the copy of the notice must, at the same time, be sent to the M. of A. A bye-law, as made, must not differ in any material particular from that set forth in the notice (g).

The Minister may, if he thinks fit, before confirming a bye-law cause a local inquiry to be held and he may in any case confirm a bye-law either without modification or with such modification as may be assented to by the committee (h).

Notice of intention to apply to the Minister for confirmation of a bye-law must be given by advertisement once in each of two consecutive weeks in such one or more local newspapers as the Minister may approve for the purpose. A copy of the notice, with a copy of the bye-law, must be forwarded at once to the Secretary to the Admiralty (i).

The notice of the intention to apply for confirmation of a bye-law must (i) :

(i.) give a description of the purport of the bye-law;

(c) Sea Fisheries Regulation Act, 1888, s. 8 ; 8 Halsbury's Statutes 747.

(d) Sea Fish Industry Act, 1938, s. 62 (1) ; 31 Halsbury's Statutes 236.

(e) *Ibid.*, s. 18 ; *ibid.*, 210.

(f) *Ibid.*, s. 20 ; *ibid.*, 212.

(g) The Sea Fisheries (Bye-laws) Regulations, 1938, dated September 22, 1938 ; S.R. & O., 1938, No. 1182.

(h) Sea Fisheries Regulation Act, 1888, s. 4 ; 8 Halsbury's Statutes 745.

(i) The Sea Fisheries (Bye-laws) Regulations, 1938, dated September 22, 1938 ; S.R. & O., 1938, No. 1182.

- (ii.) state the place at which a copy can be inspected free of charge or can be purchased on payment of 1d.;
- (iii.) indicate that any person objecting to the confirmation of the bye-law can forward his objections in writing to the Ministry, on or before twenty-eight days after the date of the first advertisement;
- (iv.) also indicate that, at the same time, a copy of the statement of objection must be sent to the clerk of the committee; and
- (v.) be signed by the clerk and his address given.

Application for confirmation of a bye-law must be sent to the Ministry after the twenty-eighth day from the date of the first advertisement of the notice (j). The application must be accompanied by two copies of the bye-law, signed by the clerk of the committee, a copy of the notice convening the meeting at which the bye-law was made, endorsed with a certificate under the hand of the person who issued the notice to the effect that it was duly served in the proper manner and specifying the latest date of service. The application for confirmation must also be accompanied by a copy of each newspaper containing the advertisement of the notice and a certificate as to the date the notice and bye-law were sent to the Secretary to the Admiralty. Where a bye-law is made by a corporate body it must be sealed with the seal of that body.

A bye-law may be repealed or amended by a subsequent bye-law (k).

A bye-law may also provide that it shall apply either to the whole or a specific part or parts of the district and whether it shall operate during the whole or any specific part or parts of the year (l).

Where a bye-law already in force is revoked as a matter of form and is simultaneously re-enacted without alteration either in its effect or as regards an area or the period to which it applies, the above-mentioned provisions as to the procedure to be followed in the making of a bye-law, the giving of publicity with respect thereto and certain parts of the procedure for the application to the Minister for confirmation do not apply (j).

Copies of all bye-laws made and for the time being in force must be kept posted up in some conspicuous place or places within the district to which the bye-laws apply (m).

The production of a copy of a bye-law purporting to be signed by a Secretary or Assistant Secretary of the Ministry is conclusive evidence of the bye-law and of the due making and confirmation thereof (n).

The Minister of Agriculture and Fisheries is empowered to revoke a bye-law made by a local fisheries committee if it appears to him to be necessary or desirable for the purpose of maintaining or improving fisheries. Before revoking a bye-law, the Minister must give notice to the committee concerned, consider any objection raised by the committee and, if so required by it, hold a public inquiry (o). [227]

The power of making bye-laws does not authorise the committee to make a bye-law so as to

- (1) Prejudicially affect any right of several fishery, or any right on, to or over any portion of the seashore where any such right

(j) See note (i), *ante*, p. 110.

(k) Sea Fisheries Regulation Act, 1888, s. 2 (1) (f); 8 Halsbury's Statutes 745.

(l) *Ibid.*, s. 2 (2); *ibid.*

(m) *Ibid.*, s. 5 (1); *ibid.*, 746.

(n) *Ibid.*, s. 5 (2); *ibid.*

(o) Sea Fish Industry Act, 1938, s. 55; 31 Halsbury's Statutes 233.

is enjoyed by any person under any local Act or special Act of Parliament or Royal Charter, letters patent, prescription or immemorial usage without the consent of the person concerned (*p*).

- (2) Affect any bye-law made or to be made by a board of salmon conservators which is for the time being in force within the district of the committee or to restrict the power of such a board to make any such bye-laws (*p*).
- (3) Affect any power of a sanitary or other local authority to discharge sewage in pursuance of any power given by a general or local Act of Parliament or by a Provisional Order confirmed by Parliament (*p*). [228]

Penalties.—The penalties for infringements of a bye-law of a local fisheries committee are contained in the Sea Fish Industry Act, 1938 (*q*), and being now applied by statute, so much of any bye-law made by a local fisheries committee as imposes penalties for contravention of the bye-laws is deemed to have been revoked as from June 2, 1938 (*r*).

Where a vessel is used for fishing in contravention of a bye-law of a local fisheries committee, the skipper and the owner of the vessel are each guilty of an offence and liable on summary conviction to a fine not exceeding for the first offence £50, for the second offence, £150, and for the third or subsequent offence, to imprisonment for a term not exceeding three months or to a fine not exceeding £300 or to both such imprisonment and such fine (*s*). Where, however, proceedings are taken against the owner of a vessel in respect of an offence committed by the skipper it is a good defence for the owner to prove that he exercised all due diligence to prevent the commission of that offence (*s*).

In the case of any vessel which, at the material time, is under charter, the reference to the owner is deemed to be a reference to the charterer (*t*).

The penalty for refusing to allow a fishery officer to exercise the powers conferred upon him by the Act of 1888, or for resisting or obstructing an officer in the performance of his duty is a maximum of £50 (*u*).

Without prejudice to the penalties prescribed in relation to fishing boats used for illegal fishing, any person who contravenes a bye-law is liable on summary conviction to a fine not exceeding £50 or, in the case of a second or subsequent offence, to a fine not exceeding £100 (*a*).

The maximum fine under the Sea Fisheries Act, 1883, sect. 7 (*3*), which relates to foreign sea-fishing boats entering within exclusive fishery limits is £50 in the case of a first offence and £100 in the case of a second or any subsequent offence (*b*).

In the case of an offence by a body corporate, any director, manager, secretary or other officer of the body corporate as well as that body are deemed to be guilty of the offence and liable to be proceeded against and punished if the offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any such individual (*c*). [229]

Jurisdiction as to Offences.—Any offence under the Act of 1888 or any bye-law made in pursuance thereof and committed on the sea coast

(*p*) Sea Fisheries Regulation Act, 1888, s. 13; 8 Halsbury's Statutes 748.

(*q*) *Ibid.*, ss. 53, 54; *ibid.*

(*r*) Sea Fish Industry Act, 1938, s. 54 (3); 31 Halsbury's Statutes 232.

(*s*) *Ibid.*, s. 53 (1); *ibid.*

(*t*) *Ibid.*, s. 53 (2); *ibid.*

(*u*) *Ibid.*, s. 54 (1); *ibid.*

(*a*) *Ibid.*, s. 54 (2); *ibid.*

(*b*) *Ibid.*, s. 54 (4); *ibid.*

(*c*) *Ibid.*, s. 60; *ibid.*, 235.

or at sea beyond the ordinary jurisdiction of a court of summary jurisdiction and not on or from a ship or boat is deemed to have been committed within the body of any county abutting on that sea coast or adjoining that sea and the offence may be tried and punished accordingly (d). [230]

Appointment, Duties and Powers of Officers.—A committee can appoint such fishery officers as it deems expedient for the purpose of enforcing the observance of its bye-laws, subject to any restrictions or conditions as to expenditure made by the council or councils by whom the committee is appointed (e). Such restrictions or conditions can only be imposed by the common agreement of all the councils represented on the committee (f). Further, the restrictions or conditions, if applied to a particular officer cannot be made after he has been appointed (g). [231]

A fishery officer appointed by a committee may within the limits of the committee's district stop and search any vessel or vehicle used in fishing or for conveying fish or any substance the deposit or discharge of which is subject to a prohibition or regulation under the bye-laws. He may search and examine instruments used in catching or carrying fish and seize any sea-fish or instrument taken or used in contravention of the bye-laws (h).

For the purpose of enforcing the bye-laws, an officer is deemed to have the same powers and privileges and to be subject to the same liabilities as a constable (i).

A fishery officer may also be empowered by a Justice of the Peace to enter premises for the purpose of detecting an offence or to search for concealed fish or an instrument where, upon information on oath, a Justice of the Peace is satisfied that there is probable cause to suspect a breach of a bye-law. The warrant cannot continue in force for more than one week (k).

Upon an order being made with respect to size limits for fish under the provisions of the Sea-Fishing Industry Act, 1933, sect. 4, as amended by the Sea Fish Industry Act, 1938, sect. 38, a fishery officer of a committee acting within the district of the committee as defined for that purpose can, at all reasonable times, go on board any fishing boat or enter any premises used in the business connected with the treatment, storage or sale of sea-fish and may search for and examine any sea-fish in any place whether on board a fishing boat or elsewhere and whether in a receptacle or not. He may seize any sea-fish landed, sold or exposed or offered for sale by any person in contravention of the statutory provisions or which any person has in his possession (l). [232]

Functions of Local Authorities other than Local Fisheries Committees.

—In addition to the powers which county councils and borough councils have in relation to the constitution of local fisheries committees, local authorities other than local fisheries committees are empowered to contribute to the expenses of a harbour authority constituted under the

(d) Fisheries Act, 1891, s. 8 ; 8 Halsbury's Statutes 752.

(e) Sea Fisheries Regulation Act, 1888, s. 6 (1) ; 8 Halsbury's Statutes 746.

(f) *R. v. North Riding of Yorkshire County Council* (1899), 1 Q. B. 201.

(g) *R. v. Plymouth Corp.* (1896), 1 Q. B. 158.

(h) Sea Fisheries Regulation Act, 1888, s. 6 (2) ; *ibid.*, 746.

(i) *Ibid.*, s. 6 (4) ; *ibid.*

(k) *Ibid.*, s. 7 ; *ibid.*

(l) Sea-Fishing Industry Act, 1933, s. 4 (6) substituted by the Sea Fish Industry Act, 1938, s. 38 ; 31 Halsbury's Statutes 223.

Fishery Harbours Act, 1915 (*m*). That Act makes provision for facilitating the improvement, management and maintenance of small harbours principally used by the fishing industry.

Local authorities are also empowered to provide or contribute towards the provision of means for cleansing shell-fish, for which purpose they may provide tanks or other apparatus, together with all necessary works and appliances and they may make charges for the use thereof (*n*).

Local authorities, other than county councils, are further empowered to make orders prohibiting in certain circumstances the distribution for sale for human consumption of shell-fish, if they are satisfied that it is in the interests of public health so to do (*o*).

A county or borough council may, if it thinks fit, pay or contribute to any expenses incurred by a board of salmon conservators in the exercise of its powers under the Sea Fisheries Regulation Act, 1888 (*p*). [233]

Finance.—A committee's expenses so far as payable by a county council are to be treated as general or special expenses as may be provided for by the order constituting the committee. If the expenses are to be charged as special expenses they must be charged in accordance with the directions given by the order. Where a committee's expenses are payable by the council of a borough they must be paid out of the general rate fund (*q*).

The accounts of local fisheries committees are subject to audit by the district auditor of the M. of H. (*r*).

Local fisheries committees as well as local authorities are empowered to contribute to the expenses of a harbour authority constituted under the Fishery Harbours Act, 1915 (*s*). That Act makes provision for facilitating the improvement, management and maintenance of small harbours principally used by the fishing industry. [234]

As to further powers of local fisheries committees in relation to small harbours, see para. [222], p. 105, *ante*.

Payment of Expenses of Members.—A committee is empowered to repay to any member of the committee the travelling expenses necessarily incurred by him in attending any meeting of the committee or any meeting convened by the M. of A. under sect. 9 of the Act of 1888 or in carrying out any inspection necessary for the exercise or discharge of the committee's functions (*t*).

Those members of a committee who are also members of and appointed by a county council may be able alternatively to claim their expenses from their council instead of claiming from the local fisheries committee (*u*).

Further, those members of a committee who are also members of and appointed by a borough council may be able alternatively to claim their expenses from their council instead of claiming from the local fisheries committee. [235]

(*m*) Fishery Harbours Act, 1915, s. 3; 18 Halsbury's Statutes 584, as amended by L.G.A., 1933, Part VIII., and Sched. XI., Part IV.; 26 Halsbury's Statutes 404 *et seq.*, 532.

(*n*) Food and Drugs Act, 1938, s. 89; 31 Halsbury's Statutes 279.

(*o*) Public Health (Shell-Fish) Regulations, 1934; S.R. & O., 1934, No. 1342.

(*p*) Fisheries Act, 1891, s. 10; 8 Halsbury's Statutes 752.

(*q*) Sea Fisheries Regulation Act, 1888, s. 10; 8 Halsbury's Statutes 747; R. & V.A., 1925, s. 10; 14 Halsbury's Statutes 631.

(*r*) Audit Regulations, 1934; S.R. & O., 1934, No. 1188.

(*s*) Fishery Harbours Act, 1915, s. 8 (3); 18 Halsbury's Statutes 584.

(*t*) Sea Fisheries Regulation (Expenses) Act, 1930; 23 Halsbury's Statutes 125.

(*u*) L.G.A., 1933, s. 294; 26 Halsbury's Statutes 462.

SEA FISHERIES COMMITTEES OF ENGLAND AND WALES, ASSOCIATION OF

The Association of Sea Fisheries Committees of England and Wales was founded in 1919, and local Sea Fisheries Committees in England and Wales, constituted under the Sea Fisheries Regulation Act, 1888 (*a*), as amended by the Sea Fish Industry Act, 1938 (*b*), are eligible for membership of the association.

The association has as its objects the protection and development of the inshore fisheries, the co-ordination of the work of the several local fisheries committees and the extension of their usefulness, and in other respects the taking of action in relation to any other subjects affecting the inshore or coastal sea fisheries in which joint action may be advantageous.

Each local fisheries committee, being a member of the association, may send any number not exceeding four representatives, either members or officials, to any meeting of the association.

At general meetings of the association the voting power of each committee represented at such meeting is limited to one vote only.

The association is the channel through which the collective opinion of local sea fisheries committees is sought by and communicated to the Government departments. Of the various departments concerned, the association is most usually in contact with the M. of A.

Meetings of the association are usually held in London. Meetings, other than the annual meeting, may, however, be held elsewhere for the purpose of dealing with local matters.

The officers of the association, who are appointed annually, are the president, secretary (*c*), treasurer and auditor. The association also appoints a standing legal adviser (*d*).

The association appoints a parliamentary committee consisting of one member of each constituent committee to be appointed by such committee, and the clerk or other officer of the committee, and the president and secretary of the association.

The parliamentary committee considers and reports to the association upon all parliamentary and legal matters and has consultations with the Government departments concerned.

The expenses of the association are met by a levy on each of the constituent authorities. The normal amount of the levy is £3 3s. a year, and this is increased to meet expenditure of a special nature such as may be incurred when Parliamentary bills are under consideration by the association. [236]

(*a*) 8 Halsbury's Statutes 743.

(*b*) 31 Halsbury's Statutes 191.

(*c*) The address of the secretary is 16, Walton's Parade, Preston, Lancs.

(*d*) The address of the legal adviser is County Hall, Maidstone, Kent.

SEASHORE

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For the General Law relating to the Seashore, see Halsbury's Laws of England, Vol. 28, title WATERCOURSES.

The seashore or foreshore (for these expressions mean the same thing (*a*)) is that portion of the Realm of England which lies between the high- and low-water marks at the medium tides which occur between the spring and neap tides (*b*).

Ownership of the Seashore.—The Crown is *prima facie* entitled to every part of the seashore, and a subject can only establish a title to any part of it either by proving an express grant thereof from the Crown or by giving evidence from which such a grant, though not capable of being produced, will be presumed (*c*). The management of the foreshore on behalf of the Crown is vested in the Board of Trade under the Crown Lands Act, 1866 (*d*). Whoever owns the foreshore does so subject to the public rights over it. [237]

Public Rights.—Though the public have only limited rights over the seashore they are not noticeably hindered in their seaside enjoyments. Local authorities and private owners of the seashore have co-operated in offering facilities which directly or indirectly have brought profit to both, and as part of the process of popularising seaside resorts those entitled to object have done all that they could to induce visitors by keeping their rights as owners in the background and by safeguarding

(*a*) *Mellor v. Walmsley* (1905), 2 Ch. 164; 44 Digest 66, 471; but see the P.H. (Amendment) Act, 1907; 18 Halsbury's Statutes 941, in which the expression "seashore" appears to be used as including the foreshore and seashore above high-water mark, although there is no definition in the Act.

(*b*) *A.-G. v. Chambers* (1854), 4 De G. M. & G. 206; 44 Digest 65, 457; *Mellor v. Walmsley* (1905), 2 Ch. 164. As to the meaning of "shore," see *Scratten v. Brown* (1825), 4 B. & C. 485; 44 Digest 69, 504. See also *Blundell v. Catterall* (1821), 5 B. & Ald. 268; 25 Digest 8, 48.

(*c*) *A.-G. v. Emerson*, [1891] A. C. 649; 55 J. P. 709; 44 Digest 74, 552; *Malcomson v. O'Dea* (1863), L. R. 10 H. L. C. 593; 25 Digest 18, 156. The statement in the text does not, however, apply to Cornwall, the rights to the foreshore of which vest in the Duke of Cornwall, except where they vest in the subject who may prove his right in the same way as he can in foreshore *prima facie* vested in the Crown.

(*d*) S. 7; 3 Halsbury's Statutes 310.

public rights in every possible way (*e*), without allowing anyone any undue preference; but it is none the less important that the rights of the public should be clearly defined, in order that they may be effectively protected should need arise.

The following practices on the seashore are not public rights :

(a) Using the foreshore as a means of passage except in exercise of rights of navigation or fishing or in respect of a lawfully dedicated right (*f*).

(b) Using the seashore for bathing or other recreation (*g*), though such a right may be gained by custom or prescription by inhabitants of the district (*h*).

(c) Taking gravel, stones or sand (*i*), except in Devon and Cornwall, where inhabitants may take it at such places and on such days as have been customary for agricultural purposes (*j*).

As to right of highway authorities to take sand for highway repair, see Highway Act, 1835, sect. 51 (*k*).

(d) Taking seaweed (*l*). The owner may maintain trespass or trover for taking of seaweed (*m*), but drifting or ungathered seaweed is not the subject of larceny (*n*).

(e) Shooting wild fowl, whether the tide is in or out (*o*).

(f) Holding meetings or services (*p*).

The two great and undoubted rights which the public have over the seashore are those of navigation and of fishing. [238]

Right of Navigation.—All persons have the right to navigate over the seashore when covered by water, that is, to pass and re-pass in ships, including the rights attendant on the right of navigation, such as anchoring and mooring, and, it is submitted, landing on the ground at low tide (*q*). The right must be exercised reasonably and with due regard to the rights which the owner of the seashore may possess (*r*), subservient to the right of navigation. [239]

(*e*) This is most frequently done by the leasing of the seashore to the local authority, and in this manner allowing the user of the seashore to be properly regulated in the public interest.

(*f*) *Blundell v. Catterall* (1821), 2 B. & Ald. 268, 301; 25 Digest 8, 48, approved in *Brinckman v. Matley* (1904), 2 Ch. 313, 323, C. A.; 44 Digest 78, 591. See also *per* Lord WRIGHT in *Williams Ellis v. Cobb and Others*, [1935] 1 K. B. 310; Digest Supp., which decided that the sea may be a sufficient *terminus ad quem* for a public way.

(*g*) *Brinckman v. Matley, supra*; *Blundell v. Catterall, supra*; *Parker v. Clegg* (1908), 2 L. G. R. 608, 618; 38 Digest 208, 432. See title *BATHING*.

(*h*) *Brinckman v. Matley, supra*; *Blundell v. Catterall, supra*; *Llandudno U.D.C. v. Woods* (1899), 2 Ch. D. 705, 709; 25 Digest 8, 51.

(*i*) *Blewitt v. Tregonning* (1835), 3 Ad. & El. 552; 44 Digest 78, 597; *Le Strange v. Rowe* (1866), 4 F. & F. 1048; 44 Digest 70, 516.

(*j*) 7 Jac. I. c. 1; 20 Halsbury's Statutes 313.

(*k*) 9 Halsbury's Statutes 72, and *Pitts v. Kingsbridge Highway Board* (1871), 25 L. T. 195; 44 Digest 79, 600.

(*l*) *Howe v. Stawell* (1833), Alc. & N. 384, Ir.; 44 Digest 78, *h*.

(*m*) *Calmady v. Rowe* (1844), 6 C. B. 1861; 44 Digest 76, 563.

(*n*) *R. v. Clinton* (1869), 4 I. R. 4 C. L. 6.

(*o*) *Blundell v. Catterall, supra*, and *per* PARKER, J., in *Fitzhardinge (Lord) v. Purcell*, [1908] 2 Ch. 139; 25 Digest 6, 29.

(*p*) *Llandudno U.D.C. v. Woods, supra*; and see *Brighton Corp. v. Packham* (1908), 72 J. P. 318, 440; 44 Digest 77, 576.

(*q*) *Garn v. Whitstable Free Fishers* (1865), 11 H. L. Cas. 192; 44 Digest 86, 684. *A.-G. v. Wright* (1897), 2 Q. B. 318, C. A.; 44 Digest 108, 869.

(*r*) *Colchester Corp. v. Brooke* (1845), 7 Q. B. 339; 44 Digest 106, 844; *The Octavia Stella* (1887), 6 Asp. M. L. C. 182; 25 Digest 39, 366; *The Swift* (1901), P. 168; 25 Digest 39, 368.

Right of Fishing.—The public have a right (which private ownership of the seashore cannot exclude) of fishing over the seashore when covered by water, though the right may be subject to some limitation in places where a several or private fishery is proved to exist. The right includes the right to take live shellfish, including (*semble*) prawns and shrimps from the seashore when uncovered (*s*) but not Royal fish—whale and sturgeon—although it is not now the practice of the Crown to claim them.

The right of fishing also includes all the other rights incidental thereto, such as the right of passage over the seashore to the sea and of embarking and disembarking gear and fish, and the existence of a custom to use waste land (not private property) above high-water mark, has been confirmed (*t*), but no member of the public has the right to appropriate any part of the seashore as ancillary to the right of fishing; and fixed fishing apparatus can be removed if detrimental to navigation (*u*). [240]

Seashore Owned by or Leased to a Local Authority.—Where the seashore is held or controlled by a local authority under a Crown grant or lease the public are normally given access to the foreshore, subject to the bye-laws of the local authority or the provisions of any local Act of Parliament (*a*). Where the seashore remains vested in the Crown, though the actual legal rights of the public are strictly limited as indicated above, the Crown does not in practice restrict the enjoyment of the shore by the public for recreation. [241]

Acquisition of Seashore under the Town Planning Act, 1932.—The powers of acquisition of the seashore by town planning and other authorities have been enlarged by this Act, which empowers the responsible authority under a town planning scheme, where the scheme is operative, to purchase land to which the scheme applies and which they require for (*inter alia*) open spaces, either by agreement or compulsorily (under an order to be confirmed by the M. of H.), and similar powers may be exercised by councils who are not the responsible authority as if they were the responsible authority. Clauses may be inserted in the scheme giving powers to maintain open spaces so acquired as if they had been acquired under the P.H.A. (*b*). [242]

The Coast Protection Act, 1939 (*c*).—This Act provides for the protection of the coast against erosion. It provides for orders being made

(*s*) See *Bagot v. Orr* (1801), 2 B. & P. 472; 25 Digest 5, 20. This case is often quoted as an authority for the statement that the public has no right to pick up shells, but it is submitted that it is a doubtful authority for this proposition. *A.G. v. Newport Corpn.*; *Ulman v. Cowes Harbour Comrs.* (1909), 2 K. B.; 25 Digest 40, 375; *Goodman v. Saltash Corpn.* (1882), 7 App. Ca. 638; 25 Digest 28, 262; and *Truro Corp. v. Rowe*, [1902] 2 K. B. 709; 25 Digest 9, 52. The law, however, seems to be unsettled as to cockles which bury themselves in the sand and may be said to partake of the nature of the soil and to be *partes soli*.

(*t*) *Mercer v. Denne*, [1905] 2 Ch. 538; 25 Digest 9, 55.

(*u*) *Williams v. Wilcox* (1838), 8 A. & E. 314; 25 Digest 38, 362.

(*a*) Among bye-law making powers which have been used in this context may be mentioned: P.H.A., 1875, s. 164; 13 Halsbury's Statutes 694; L.G.A., 1894, s. 8 (1) (d); 10 Halsbury's Statutes 780; Open Spaces Act, 1906, s. 15; 12 Halsbury's Statutes 389; P.H.A. Amendment Act, 1907, s. 82; 13 Halsbury's Statutes 941.

(*b*) Town Planning Act, 1932, ss. 25, 26, Sched. III.; 25 Halsbury's Statutes 502, and Model Clauses issued by M. of H., clause 8.

(*c*) 32 Halsbury's Statutes 618.

by the Board of Trade prohibiting, restricting or imposing conditions on the excavation, removal or other disturbance of materials forming part of such portion of the seashore as may be specified in the order. Before making an order the Board of Trade must comply with provisions set out in the Schedule to the Act, which include the service of notices, the holding of a public local inquiry, and the consideration of objections. If an order is made to which objections have been made, it is to be provisional only and must be confirmed by Parliament. [243]

Local Legislation.—Attention may usefully be drawn to the Lindsey County Council's (Sandhills) Act, 1932 (d), giving the county council wide powers, with the object of enabling the council to preserve the amenities of and regulate for the public benefit the strip of sandhills running along the Lincolnshire coast, without having to pay an unreasonable amount by way of purchase or compensation. The Act vests such sandhills in the Council as part of the controlled sandhills and provides that they shall be an open space under the Open Spaces Act, 1906 (e). The owners of the land behind such sandhills are to be allowed to develop it on lines to be agreed. Questions of ownership are to be settled according to ordinary principles of law, and in case of dispute by an independent arbitrator. The council are empowered to prepare a map of the controlled sandhills and specify in advance the licences which they are prepared to grant and the restrictions and conditions to be imposed as to any particular land. [244]

Artillery and Rifle Ranges.—Bye-laws to secure the public from danger may be made in respect of rifle or artillery practice carried on over any seashore from any land, the use of which can be regulated by bye-laws under the Military Lands Acts, 1892 and 1900 (f), but if such bye-laws injuriously affect any public right, the consent of the Board of Trade must be obtained thereto (g). [245]

Land Adjoining the Seashore.—The beach and sandhills lying between high-water mark and the enclosed land behind, even though they may have laid waste and unenclosed throughout living memory stand in the same legal position as any other private land, although it may often be found that being unsuitable for cultivation they are subject to rights of common to which, if in a borough or urban district, the public may have a right of access of air and exercise by the application of sect. 193 of the Law of Property Act, 1925 (h). See title COMMONS.

In the same way if a right of way is claimed over land adjoining the seashore, the same legal considerations apply as apply in the case of ways over private land in general, and consideration must be given to the nature of the termini, the duration, amount and purpose of the public use of the way in question (i). [246]

(d) This Act is not affected by the provisions of the Town Planning Act, 1932 ; see *ibid.*, s. 56.

(e) 12 Halsbury's Statutes 382.

(f) 17 Halsbury's Statutes 574, 597.

(g) Military Lands Act, 1900, s. 2 (2) (b) ; 17 Halsbury's Statutes 597. For this purpose "public right" means any right of navigation, anchoring, grounding, fishing, bathing, walking or recreation, s. 2 (4).

(h) 15 Halsbury's Statutes 371.

(i) See *Behrens v. Richards*, [1905] 2 Ch. 614; 44 Digest 77, 584, and *Williams Ellis v. Cobb and Others*, [1935] 1 K. B. 310, *supra*. Rights of Way Act, 1932, and title ROADS CLASSIFICATION.

SEATS, PROVISION OF

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See also titles :

AMENITIES;
OPEN SPACES

PUBLIC PARKS ;
ROAD AMENITIES ;

On Highways.—By sect. 14 of the P.H.A., 1925 (*a*), if adopted, a local authority which for the purpose of the section includes borough, urban and rural district councils (*b*) and any person with their consent, may in proper and convenient situations in any street or public place (*c*) erect and maintain seats for the use of the public.

Conditions may be imposed by the council when giving consent. By sect. 16 (*d*) the consent of the county council must be obtained where the seat is to be erected in any street which is a county road maintained by the county council.

Whilst there are no restrictions as to public right of passage and avoiding nuisance to adjacent owners and occupiers such as are imposed by sect. 13 in the case of street orderly bins, the local authority must act reasonably and the seats must be so placed as not to obstruct access to or exit from any railway station or goods yard or any premises belonging to any statutory undertakers and used for the purpose of their undertaking. The H.O. recommend that the chief officer of police of the locality should be consulted in fixing sites for seats to be erected under these powers.

Seats provided under sect. 14 must be free, and in this they differ from those provided in public parks and pleasure grounds. [247]

In Parks, Open Spaces, Public Pleasure Grounds, etc.—Sect. 164 of the P.H.A., 1875 (*e*), impliedly authorises an urban authority to place seats in pleasure grounds maintained by them.

Where sect. 76 of the P.H.A. Amendment Act, 1907 (*f*), is put in force by order of the M. of H., the local authority may, subject to any restriction or conditions prescribed by the Ministry, place or authorise any person to place chairs or seats in any public park or pleasure ground

(*a*) 13 Halsbury's Statutes 1119.

(*b*) Ss. 3, 4; 13 Halsbury's Statutes 1116.

(*c*) "Street" is defined by s. 4 of the P.H.A., 1875; 13 Halsbury's Statutes 625, but there is no definition of "public place" in the P.H.As. except for the purpose of s. 26 of the P.H.A., 1925; 13 Halsbury's Statutes 1124, and of extending the meaning of the Vagrancy Acts as applied by P.H.A., 1907, s. 81; 13 Halsbury's Statutes 940.

(*d*) 13 Halsbury's Statutes 1119.

(*e*) *Ibid.*, 693. Extended to rural district councils by S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262.

(*f*) 13 Halsbury's Statutes 938, 939.

provided by them or under their control, and may charge for, or authorise any person to charge for, the use of the chairs so provided. Expenses are to be defrayed out of the same fund or rate as the expenses of the park or ground, and receipts are to be credited thereto.

The Open Spaces Act, 1906, s. 10 (g) enables the council of any county, municipal or metropolitan borough, urban or rural district, and any parish council, if authorised by order of the county council, to provide seats in any open space or burial-ground acquired or controlled by them under the Act. The expression "open space" means any land, whether enclosed or not, on which there are no buildings, or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden, or is used for the purposes of recreation, or lies waste and unoccupied (h).

The council of a parish with a population exceeding 500, in which the Public Improvement Act, 1860 (i) has been adopted, may place convenient seats on open walks and footpaths in the parish, and may provide not more than half the cost out of their rate; it is, however, a condition precedent that at least one-half of the proposed expenditure on the seats shall be raised by private subscription or donation. [248]

London.—The L.C.C. (General Powers) Act, 1928, sect. 35 (k), empowers metropolitan borough councils and any other person with the consent of the borough council to provide and maintain seats for public use in any street or public place vested in or repairable by the borough council. The Commissioner of Police of the Metropolis must in all cases be first consulted. Under the L.C.C. (General Powers) Act, 1935, sect. 42 (l), metropolitan borough councils and the L.C.C. may provide chairs and seats in parks and open spaces. Under the L.C.C. (General Powers) Act, 1925, sects. 18—29 (m), the L.C.C. has power to lay out and maintain recreation grounds; no special reference is made to seats, but the general words of the sections may be taken to include such provision. The Open Spaces Act, 1906, sect. 10 (g), applies to London. [249]

(g) 12 Halsbury's Statutes 387.

(h) S. 20; *ibid.*, 391.

(i) 12 Halsbury's Statutes 371.

(k) 11 Halsbury's Statutes 1413.

(l) 28 Halsbury's Statutes 151.

(m) 11 Halsbury's Statutes 1872—1874.

SECONDARY EDUCATION

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See also titles :

BOARD OF EDUCATION ;
EDUCATION ;
EDUCATION AUTHORITY ;
EDUCATION COMMITTEE ;
EDUCATION FINANCE ;
EDUCATION SPECIAL SERVICES ;

HIGHER EDUCATION ;
INFANTS, CHILDREN AND YOUNG PER-
SONS ;
TECHNICAL AND COMMERCIAL EDUCA-
TION.

Definition.—As in the case of “elementary education” there is no definition of the expression “secondary education” either in the Education Acts or in the regulations of the Board of Education. Secondary education is, by statute, a part of “higher education,” since this is defined (*a*) as “education other than elementary education.”

It may, however, be said that secondary education is that provided at a secondary school, a secondary school being defined by the Board of Education as one “for pupils who intend to remain for at least four years up to at least the age of sixteen.” Such a school must provide a progressive course of general education of a kind and amount suited to an age range at least from twelve to seventeen (*b*). [250]

Kinds of Secondary Schools.—To the local government officer and the councillor the county secondary school will probably be the type of secondary school that is known best—that is, the secondary school that is both provided and maintained by the local education authority.

There are, in addition, a number of endowed secondary schools which, although not provided by the local education authority, are maintained or aided by them, or in respect of which the local education authority are trustees of a foundation.

Apart from those schools which receive some financial assistance from a local education authority, there are those which receive grant direct from the Board of Education, and are consequently independent

(*a*) Education Act, 1921, s. 170 (3); 7 Halsbury's Statutes 212.

(*b*) Board of Education Rules, dated June, 1934, 27-9999, Rule 16.

both from the point of administration and finance of a local education authority.

In all the foregoing cases it is essential that a school shall be recognised for grant by the Board of Education under their regulations for Secondary Schools (*c*).

There are, in addition, a number of secondary schools to which, or in respect of which, no grant from public funds is paid, but which are recognised by the Board of Education as efficient under para. 4 of Rule 16 (*d*). The Board of Education in an explanatory note to their list of recognised efficient secondary schools (*e*) state that "a certain number of secondary schools and a large proportion of preparatory schools of known and high efficiency have never applied to the Board for inspection, and consequently no inference as to the efficiency or inefficiency of a school can be drawn from the fact that it does not appear in the list." [251]

Conditions for Recognition of a Secondary School as Efficient but not for Payment of grant.—In order that a secondary school may be recognised as efficient it must comply with the following conditions :

- (i.) It must comply with the requirements of the Education Act, 1921, as amended by any subsequent legislation.
- (ii.) It must be kept on a level of efficiency which is satisfactory, regard being had to the purposes for which it is conducted and to the level of efficiency which would be required in the case of any similar institution aided by grant. [252]

Powers of a Local Education Authority.—Part VI. of the Education Act, 1921 (*f*), deals with higher education in general, which, as elsewhere stated (*g*) includes education in secondary, technical and art schools and for adults. The Act does not deal specifically with secondary schools, but in sect. 70, where the marginal note says "Power to aid higher education," it is provided that the local education authority shall consider the educational needs of their area and take such steps as seems to them desirable, after consultation with the Board of Education, to supply or aid the supply of higher education." The local education authorities here referred to are, in particular, the councils of counties and county boroughs (*h*).

There can be no doubt, therefore, that this somewhat widely defined power includes that of providing or aiding the supply of education in secondary schools, and, having regard to the policy of the Board of Education, this power has now become in practice a duty.

It will be observed that, in order that secondary school education may be available, it may be either provided by or aided by the local education authority. Which of these courses is adopted—and there may be a combination of them—will depend upon the number, type, efficiency and suitability of schools existing in the area of the authority, for it may well be that, by improving the staffing, equipment or pre-

(c) S.R. & O., 1935, No. 679.

(d) *Supra.*

(e) B.E. List 60, "Secondary Schools and Preparatory Schools in England recognised by the Board as efficient."

(f) 7 Halsbury's Statutes 168—174.

(g) See title HIGHER EDUCATION.

(h) Education Act, 1921, s. 3 (2); 7 Halsbury's Statutes 131. For the power of non-county boroughs or urban districts to provide higher education, see s. 70 (2); *op. cit.* 168.

mises of existing schools, the necessary provision can be made satisfactorily and at less cost than would be incurred in providing a new school.

On the other hand, when a district is found to be without or with inadequate secondary school education, and there is no existing school which could be aided, or there is one which, if aided, would not be satisfactory, then the local education authority would find it necessary to provide a school or schools of its own. A perusal of column 2 of the Board of Education List 60 (*i*) will show the large number of schools which are financially aided, of which the responsible bodies are not the local education authority. [253]

Management of Secondary Schools.—The only requirement of the Board of Education in regard to the management of a secondary school which is recognised for grant is that it shall be suitable as regards management, and must be governed and conducted under adequate and suitable rules (*k*). In practice it will be found that such a school is usually controlled by a governing body, or by a committee or sub-committee of the local education authority exercising the functions of governors.

The composition of such a governing body may vary from school to school, but as a rule it will consist of a number of members nominated by the local education authority (*i.e.* the council of a county or a county borough) together with persons appointed or co-opted on account of their knowledge or experience of educational matters. When the local education authority is the council of a county, arrangements are sometimes made for the governing body to include members nominated by the council of the borough or urban district in which the school is situated or which it serves.

As regards secondary schools which are provided and maintained by a local education authority, it would appear that, whether the managing body is termed a body of governors or a local committee, its status is that of a sub-committee of the education committee of the local education authority for higher education, and consequently its function is to report and recommend to that committee. It would only possess executive powers if these were delegated direct from the council of the county or county borough. [254]

Non-provided and Charitable Trust Schools.—In order that a secondary school may be recognised by the Board of Education for the purposes of payment of grant, it is necessary that their regulations (*l*) shall be complied with. So far as a school which is not provided by a local education authority or which is regulated by a charitable trust is concerned, these requirements include those set out in the First Schedule of the Board's Regulations. The most important may be summarised as follows :

(i.) As respects the governing body of the school, approved provision must be made either :

1. For a majority of representative governors ; or
2. For the appointment of one-third at least of the governors by the local education authority for higher education.

(*i*) "Secondary Schools and Preparatory Schools in England recognised by the Board as efficient."

(*k*) Regulations for Secondary Schools, S.R. & O., 1935, No. 679, Art. 3.

(*l*) Regulations for Secondary Schools, S.R. & O., 1935, No. 679.

(ii.) (a) No catechism or formulary distinctive of any particular religious denomination may be taught in the school, except as provided.

(b) If the instrument under which the school is governed requires, or does not prohibit, the giving in the school of religious instruction distinctive of any particular denomination, the governing body may provide such instruction for any pupil upon the written request of his parent or guardian. A record must be kept of all such requests.

(iii.) (a) A pupil must not be required, as a condition of being admitted into or remaining in the school as a day pupil, to attend or abstain from attending any Sunday school, place of religious worship, religious observance, or instruction in religious subjects in the school or elsewhere; and the times for religious worship or for any lesson on a religious subject must be conveniently arranged for the purpose of allowing the withdrawal of any pupil therefrom.

(b) These provisions apply to boarders as well as day pupils.

(iv.) The instrument under which the school is governed must not require any members of the teaching staff to belong, or not to belong, to any particular religious denomination. [255]

The Provisions of Scholarships, etc.—The Education Act, 1921 (*m*), deals very briefly with the question of scholarships, etc., for it merely states that the power of a local education authority to supply or aid the supply of higher education includes the power to provide or assist in providing scholarships (which term includes allowances for maintenance) for, and to pay or assist in paying the fees of, students at schools or colleges or hostels within or outside their area.

The method of exercising this power varies considerably among local education authorities. There is, however, almost complete uniformity in that the award of any financial assistance under this heading to a child first becomes possible at or about the age of eleven, i.e. the usual age for the admission of a child to a secondary school.

The Board's Regulations for Secondary Schools require that candidates for admission must pass an "entrance test suitable to their age" (*n*) and it is on the result of this test—for which all children of the appropriate age are eligible, whether attending a public elementary school or not—that the vacancies in secondary schools are filled.

Some local education authorities award scholarships to those candidates who have been most successful at this entrance examination, such scholarships usually taking the form of free tuition and books, etc., at a secondary school. Other local education authorities do not award scholarships as such, but in their place provide assistance to any parent whose child has passed an examination on the result of which he has qualified for admission to a secondary school, and whose financial circumstances preclude his paying all or part of the school fees. By this method financial assistance from public funds is only granted when the authority are satisfied, after investigation, that it is necessary.

Other forms of assistance consist of grants for, or towards, the cost of providing a necessary school uniform, travelling expenses between the home of the child and the school, and mid-day meals at school.

In addition to assistance by means of a complete or partial remission of fees, assistance is sometimes granted in the form of maintenance allowances which usually increase in amount with a pupil's age.

(*m*) S. 71 (c); 7 Halsbury's Statutes 168.

(*n*) Art. 13 (b).

Allowances are also sometimes granted in order to enable a pupil who has passed a first school examination to remain at school in order to prepare for a second school examination.

The award of places which in cases of financial need carry total or partial exemption from tuition and entrance fees is made obligatory by the Board in their Regulations (o). These places are known as "special" places, and their holders are referred to as "special pupils." The number of these special places awarded in any school year must not be less than 25 per cent. of the total number of admissions in the previous year, or such other limits as may be approved by the Board of Education. Thus, in certain circumstances, and with the approval of the Board of Education, it is possible for arrangements to be made so that the maximum ratio of special places may be increased to 100 per cent.

The Board of Education in Circular No. 1444 (dated January 6, 1936) outlined the plan of educational development which they contemplated putting into operation, and which could be effected without further legislation—that is, it could be done administratively. Included in its provisions were two particularly concerning secondary schools, i.e. those relating to special places and state scholarships.

In regard to special places the circular states that it was proposed to remove all maximum limits (p) on the number that could be awarded annually. This would give local education authorities or governing bodies complete discretion in regard to the number of special places to be awarded, provided there were a minimum of 25 per cent. As stated above, effect has now been given to this proposal.

With regard to State scholarships, the Board of Education expressed the view that the maximum number of 300 State scholarships awarded to candidates in full-time attendance at secondary schools recognised for purposes of grant, should be increased to 360 and should be open to all candidates in full-time attendance at any secondary school in England or Wales.

In connection with the award of financial assistance to pupils, it has been held that the right of an "interested" person to inspect accounts, vouchers, etc., under sect. 224 (1) of the L.G.A., 1933 (q), does not apply to the application form of a parent or guardian who applies to a local education authority for financial assistance to send his child to a secondary school (r). [256]

Teaching Staff. Qualifications.—The teaching staff of a secondary school must be suitable and sufficient in number and qualifications for providing adequate instruction in each subject in the curriculum (s). Although there is no official requirement that only graduates shall be appointed, it is the usual practice of local education authorities to appoint graduates who have an honours degree in their subject, except, of course, in the case of teachers of handicraft, domestic subjects, physical training and music, where other recognised qualifications are required. [257]

(o) Art. 14 (b) as amended by Grant Regulations No. 10 (Amendment No. 1); S.R. & O., 1936, No. 523.

(p) At the time this Circular was issued the maximum limit was 50 per cent.

(q) 26 Halsbury's Statutes 427.

(r) *R. v. Monmouth County Council, ex parte Smith and Another* (1935), 99 J. P. 246.

(s) B.E. Regulations for Secondary Schools, Art. 9.

Appointment.—Teachers must be employed under a written agreement, unless they are appointed by a local education authority, in which case they may be appointed either by a written agreement or under a minute of the authority (*t*). Where the power of appointing teachers has been delegated by the local education authority to their education committee, a minute of that committee would be sufficient for the purpose. But where a secondary school, which is both provided and maintained by the local education authority, is managed by a body of governors or a local committee, then, it is submitted, the power of appointing teachers cannot be re-delegated to them by an education committee. Such a body of governors or local committee would have only the power of recommending appointments to the education committee (*u*). If it is desired that such bodies shall have the right to appoint teachers without reference to the education committee, then the necessary power would have to be delegated to them direct from the local education authority, *i.e.* the council of a county or county borough.

The agreement or minute of appointment must, either directly or by reference to specified regulations or minutes, define the conditions of service and also indicate whether the teacher is employed in full-time service in the capacity of a teacher, or partly in the capacity of a teacher and partly in another capacity (*a*).

In order that any addition to, amendment of, or deletion from a local education authority's conditions of service may apply to those teachers already in their service, some authorities insert among their conditions of appointment one to the effect that the appointment is made in accordance with the rules and regulations of the authority in force from time to time. [258]

Misconduct, etc.—If a teacher has been convicted of a criminal offence, or his appointment is terminated, whether by dismissal or by his resignation, on account of misconduct or grave professional default, the facts must at once be reported to the Board of Education (*b*).

A local education authority must not employ a teacher who has been declared by the Board of Education to be unsuitable for employment on the grounds of misconduct or grave professional default. Before taking any action in such a matter the Board of Education would use every available means of informing the teacher of the charges against him, and of giving him an opportunity for explanation (*c*). [259]

Ratio of Teachers to Pupils.—The Board of Education, in May, 1933, drew the attention of local education authorities to the question of staffing in secondary schools (*d*). They reminded authorities that the Board had not hitherto laid down any general principles governing the staffing of secondary schools and that, in the main, their action had been limited to dealing with cases of extravagant or insufficient staffing in individual cases. After conducting an investigation of the staffing of secondary schools of various types the Board reached the conclusion that it was impossible to prescribe staffing ratios for schools of varying sizes and for different types of areas. They felt that any formula which they might attempt to prescribe for determining the staff

(*t*) Art. 10 (a).

(*u*) *Delegatus non potest delegare.*

(*a*) Art. 10 (b).

(*b*) Art. 11.

(*c*) Art. 12.

(*d*) B.E. Circular 1428 (May 22, 1933), "Staffing in Secondary Schools."

appropriate to any given school would need to be hedged round by so many qualifications as to render it of little practical value.

The Board did, however, deal with the question of allowing more independent study on the part of pupils as a means of economising in staff, particularly in the case of sixth-form pupils. They suggested that for those pupils about ten periods out of a weekly total of thirty-five might reasonably be spent in private study.

The Board also felt that in many cases there was an excessive allowance of free periods, and, while admitting that particular circumstances must be specially considered, in general they were of opinion that one free period for each full working day was the maximum that should not be exceeded, except in the cases of departmental heads. [260]

Size of Classes.—The Regulations of the Board of Education (e) state that the number of pupils taught together at any one time must not, without the concurrence of the Board of Education, exceed thirty, and must never exceed thirty-five.

The Board, in Circular 1441 (April 16, 1935), drew the attention of local education authorities to this provision, for, owing to the increase in the number of entrants to secondary schools, due to the comparatively high birth rate during 1920 and 1921, the size of classes in a number of secondary schools had exceeded this maximum. The Board therefore asked local education authorities and governing bodies, without prejudice to the continued education of the pupils already in the schools, so to regulate their future admissions as to ensure that classes should, as far as practicable, be limited to thirty and should in no circumstances exceed thirty-five. [261]

Fees.—The Board of Education Regulations (f) state that approved arrangements must be made with respect to the fees to be charged, and the exemptions to be given to special pupils, and must specify, among other things, the financial circumstances that will qualify special pupils for total exemption, and partial exemption respectively and the extent of the exemption to be given to special pupils qualified therefor. The Board also require that remissions of fees, other than exemptions for special pupils or scholarships, given in accordance with approved arrangements, may only be granted in exceptional cases of individual hardship arising after admission.

On the question of fees the Board issued Circular 1421 (September 15, 1932), in which they stated that they felt bound to take account of two criticisms which have recently been made with increasing force, viz. that (a) the system of admitting pupils free to secondary schools without any regard to the capacity of the parents to pay was needlessly wasteful of public funds, and ran counter to the principle, now generally accepted, that where educational awards were made by public or quasi-public bodies the amount of any assistance given should vary according to the circumstances of the successful candidates, and (b) the fees charged often bore but a small proportion to the cost of the education provided, and were frequently not adequate having regard to what parents could afford to pay. The Board recognised that it would not be reasonable to expect that the conditions for the special remission of fees should be uniform for the whole country. They contemplated for complete exemption from fees an income limit of £3 to £4 a week in

the case of a family with one child, plus an addition of 10*s.* for each additional child, or any alternative scheme having equivalent effect.

In order to meet these criticisms authorities and governors were asked to review the fees in their schools. The Board did not desire to lay down any uniform standard, but they considered that it would be not unreasonable to look for some increase where the fee was below 15 guineas a year; and while regard must necessarily be had to the fees charged, they would ordinarily hesitate in future to approve a fee of less than 9 guineas. Where so desired, arrangements might properly include provision for some reduction of fees for pupils over sixteen who had passed an approved first examination.

Where a school contained a preparatory department the Board considered that the fee charged to pupils in that department should be either the school fee or 15 guineas, whichever was the higher.

As this Circular was the subject of some criticism, Circular 1424 (November 21, 1932), was issued, stating that the Board of Education were prepared to consider the proposals of local education authorities to allow them discretion within certain limits of the terms stated in the former circular. [262]

Curriculum.—The Board of Education Regulations for Secondary Schools (*g*) in Art. 7 state that the curriculum of a secondary school reorganised by them for grant must make provision for instruction in the English language and literature, at least one language other than English, Geography, History, Mathematics, Science, Drawing, Singing, Manual Instruction in the case of boys, Domestic Subjects in the case of girls, Physical Exercises and Organised Games. None of these subjects may be omitted without the previous permission of the Board.

In practice the curriculum of a secondary school depends, to a large extent, on the subjects of the school leaving examination for which the pupils are presented. Considerable publicity has been given to the undesirable effects of a relatively narrow range of subjects pursued solely for examination purposes, and there is reason to believe that a change for the better will be made in the near future (*h*).

The number of subjects that are available under the above headings in any one school depends chiefly on the size of the school. For instance, in the ordinary three-form entry school, instruction in languages usually includes a choice of two from Latin, French and German, whereas in schools of a large size Greek and Spanish may be added. Similarly on the science side a wide range of subjects, including Zoology and Geology, may be available when the size of the school is such that classes can be arranged.

It is interesting to note that the Welsh Intermediate Education Act, 1889 (*i*), states that the expression "intermediate education" means a course of education which does not consist chiefly of elementary instruction in reading, writing and arithmetic, but which includes instruction in Latin, Greek, the Welsh and English languages and literature, modern languages, mathematics, natural and applied science or some such studies.

In Circular 1445 (January 18, 1936), the Board of Education outlined their views on the development of physical education in schools and among young people generally. [263]

(*g*) S.R. & O., 1935, No. 679.

(*h*) See sub-title "Examinations" in this Article, p. 126, *post*.

(*i*) 7 Halsbury's Statutes 265..

Religious Instruction.—In secondary schools which are aided but not provided by a local education authority, the authority has no power to require that any particular form of religious instruction or worship or any religious catechism or formulary which is distinctive of any particular denomination shall or shall not be taught, used or practised (*k*). In provided schools no pupil may be excluded or placed in an inferior position on the ground of religious belief. Neither must any catechism or formulary which is distinctive of any religious denomination be taught, except at the request of the parents of the pupil, and then only at such time and under such circumstances as the authority think desirable. If this is done, no cost may be borne by the authority, and no unfair preference may be shown to any religious denomination (*l*).

In secondary schools receiving a grant or maintained by a local education authority, the "conscience" clause applies, whereby no pupil may be required to attend or refrain from attending any place of religion, whether in the school or elsewhere, as a condition of admission. The time for religious worship or for any lesson on a religious subject must be conveniently arranged for the withdrawal of any pupil (*m*). [264]

Examinations.—It is usual for the curriculum of a secondary school to be so arranged that at the end of the course—at or about the age of sixteen years—a pupil may sit for a First Examination. The examining body is invariably one of the universities, or in Wales, the Welsh Central Board for Intermediate Education. The following examinations are included under this heading :—

The School Certificate Examination of the following :

Oxford and Cambridge Examination Board ;

Oxford Delegacy for Local Examinations ;

Cambridge Local Examinations Syndicate ;

University of Bristol ;

University of Durham ;

Northern Universities Joint Matriculation Board ;

General School Examination of the University of London.

Welsh Central Board for Intermediate Education.

The Head of a secondary school may exercise his discretion as to which pupils shall be allowed to be examined.

Under certain conditions pupils who pass the above-mentioned examinations may claim exemption from a matriculation examination.

Although the majority of pupils attending secondary schools leave after having passed a First Examination, a considerable number remain for a further period of one or two years. For this purpose some schools provide courses of commercial studies at the conclusion of which pupils sit for the examinations of such bodies as the Royal Society of Arts and London Chamber of Commerce.

Those pupils who are prepared to remain for a two-year course after passing a First Examination may sit for a Second Examination in order to qualify for the Higher School Certificate of the bodies mentioned above. In certain circumstances success in this may be regarded as exempting the candidate from the Intermediate Examination for a degree. [265]

(*k*) Education Act, 1921, s. 72 (1) ; 7 Halsbury's Statutes 169.

(*l*) S. 72 (2) and (3).

(*m*) S. 72 (4).

London.—The L.C.C. are the sole education authority in London ; the metropolitan borough councils and the City corporation have no concurrent powers under the Education Act, 1921 (*n*).

As to the provisions of the Education (London) Act, 1908, relating to limitation or qualification of governors or managers of institutions aided by the L.C.C., see title HIGHER EDUCATION.

The maintenance of adequate secondary schools is fostered by annual grants by the council. The grants are inclusive, covering payments in respect of the councils' scholarship holders. The schools receiving grants are subject to inspection by the council and admit representatives of the council to their governing bodies. To meet the increased demand due to the council's scholarship scheme the council has also provided its own secondary schools and has contributed to the cost of enlarging certain of the endowed schools.

The City of London aids, out of its estates, certain public schools and charitable educational foundations. [266]

SECRETARY OF STATE

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See also titles :

BYE-LAWS ;
CONSTITUTIONAL LAW ;
HOME OFFICE ;

LOCAL GOVERNMENT ;
MODEL BYE-LAWS ;
GOOD RULE AND GOVERNMENT.

Introduction.—The office of Secretary of State is derived from that of the King's Secretary or Clerk which dates from the time of Henry III. Under the Tudors the secretaryship became a great political office and since 1483 there have been at least two. In the time of Elizabeth the name Secretaries of State was given to them.

Until the end of the seventeenth century the number remained at two, but between 1707 and 1746 a third was appointed for Scotland, and between 1768 to 1782 for the Colonies. In the latter year the number again became two, the Home Secretary and the Foreign Secretary, but in 1794 a Secretary for War was appointed and up to 1854 he was also Secretary for the Colonies. In 1856 a Secretary of State for India was appointed ; in 1926, the Secretary for Scotland who had been established again in 1888 was made Secretary of State for Scotland (*a*). In 1917 the Secretary of State for Air was established and in 1926 that for the Dominions. The Secretaries of State are all members of the Privy Council and of the Cabinet and theoretically are all equally capable of discharging the duties of all the others, but as explained below the Home Secretary has become the principal Secretary of State.

(n) See ss. 3 (2), 170 (21), (22) ; 7 Halsbury's Statutes 131, 214.

(a) Secretary of States Act, 1926 ; 3 Halsbury's Statutes 463.

Since the outbreak of war a Minister of Home Security has been appointed and functions of the Secretary of State under the Air-Raid Precautions Act, 1937 (*b*), which had been transferred to the Lord Privy Seal (*c*) were transferred to that Minister (*c*) as well as those under the Civil Defence Act, 1939 (*d*). By article 88 of the Defence (General) Regulations (*e*) any of the powers conferred on a Secretary of State by those regulations except those relating to explosives, ammunition and firearms, and the manufacture and transport of dangerous articles may be exercised by the Minister of Home Security (*ee*). [267]

Definition.—The only definition of Secretary of State is that contained in the Interpretation Act, 1889 (*f*), which says that “unless the contrary intention appears” Secretary of State means “one of His Majesty’s principal Secretaries of State for the time being.” As the Home Secretary performs most of the formal and ceremonial acts that are necessary as successor and representative of the King’s Secretary, such as countersigning the warrant for affixing the Great Seal, the custom has grown up of referring to him as the Secretary of State. In all statutes and orders therefore where the “Secretary of State” is mentioned the Home Secretary must be taken to be meant unless a contrary intention is palpably evident, such as a reference to the Secretary of State for War in the Army Act (*g*). [268]

Functions of the Home Secretary (*h*).—Among the most important are those relating to good order and the administration of justice, such as the supervision of the police forces (*i*), the control of prisons and approved schools, the appointment of Recorders and the giving of advice to the King on the exercise of his prerogative of mercy. Next follow his duties in respect to local government administration which include the confirming of bye-laws in regard to good rule and government (*k*) and those made under the Advertisement Acts (*l*), supervision of the administration of the Burial and Cremation Acts (*m*), and control of the registration of electors (*n*). Apart from these the Home Secretary has important duties in regard to factories (*o*), dangerous drugs (*p*), explosives and petroleum (*q*), and the control and naturalisation of aliens and the extradition of offenders. [269]

(*b*) 30 Halsbury’s Statutes 1025.

(*c*) S.R. & O., 1939, No. 862.

(*d*) 32 Halsbury’s Statutes 813.

(*e*) S.R. & O., 1939, No. 927. See Butterworths’ Emergency Legislation Service.

(*ee*) S.R. & O., 1939, No. 1142. See Butterworths’ Emergency Legislation Service.

(*f*) S. 12 ; 18 Halsbury’s Statutes 995.

(*g*) L.G.A., 1933, s. 250 (10) ; 26 Halsbury’s Statutes 441, and Army Act, s. 190 (1) ; 17 Halsbury’s Statutes 241 and Supp., where, however, the definition of the Interpretation Act, 1889, is again repeated.

(*h*) For the principal functions of the Home Secretary, see the title HOME OFFICE.

(*i*) See titles POLICE and METROPOLITAN POLICE.

(*k*) See titles BYE-LAWS ; GOOD RULE AND GOVERNMENT ; MODEL BYE-LAWS.

(*l*) See title ADVERTISEMENTS.

(*m*) See titles BURIALS AND BURIAL GROUNDS ; CREMATION.

(*n*) See title REGISTRATION OF ELECTIONS.

(*o*) See title FACTORIES AND WORKSHOPS.

(*p*) See title POISONS.

(*q*) See title PETROLEUM.

SEEDS

THE SEEDS ACT, 1920 AND THE SEEDS (AMENDMENT) ACT, 1925	PAGE 129	PAGE 132
THE ADULTERATION OF SEEDS ACTS, 1869 AND 1878	-	132
POISONED GRAIN	-	132

*See also titles : AGRICULTURE ;
ALLOTMENTS.*

The Seeds Act, 1920, and Seeds (Amendment) Act, 1925.—The first comprehensive scheme for regulating the sale of agricultural and horticultural seeds was contained in regulations made under the Defence of the Realm Acts during the Great War, 1914—18; at present the sale of seeds is governed by the Seeds Act, 1920 (*a*), the Seeds (Amendment) Act, 1925 (*b*), the Seeds Regulations, 1922 (*c*), and the Seeds (Amendment) Regulations, 1935 (*d*). The general scheme of this legislation is the provision of certain statutory particulars on sales of seeds to which the Acts apply, the provision of facilities for testing seeds at official or licensed seed-testing stations, the presumption, for the purpose of certain civil proceedings, of the correctness of statutory statements, and the prohibition of the sale or use of seeds containing injurious weed seeds. The statutes and regulations contain ancillary provisions as to sampling, and as to enforcement by inspection and prosecution. [270]

The authority responsible for administration in England and Wales is the M. of A., but in making regulations as respects forest tree seeds the Minister is required to consult the Forestry Commissioners (*e*). No powers or duties are vested in local authorities, but as the Minister may authorise persons other than officers of the Ministry to enter premises where seeds are stored or exposed for sale, he may arrange with local authorities for the services of their officers in sampling duties. [271]

The seeds to which the statutes apply are enumerated in Art. 2 of the 1922 Regulations; and comprise (*a*) the principal grass and clover seeds, (*b*) wheat, barley, oats and rye, (*c*) field seeds, such as tares, swede and sugar beet, (*d*) garden seeds (vegetable), (*e*) flax seed and linseed, (*f*) the seeds of certain coniferous and broad-leaved forest trees. Seed potatoes are included by sect. 1 of the 1920 Act. On a sale of any of the foregoing seeds or seed potatoes the seller must deliver to the purchaser, on or before delivery of the seeds, a written statement containing the prescribed particulars (*f*) with respect, in the case of

(*a*) 1 Halsbury's Statutes 70.

(*b*) *Ibid.*, 138.

(*c*) S.R. & O., 1922, No. 915.

(*d*) S.R. & O., 1935, No. 1226, revoking the 1922 Regulations as to seed potatoes.

(*e*) 1920 Act, s. 7 (1); 1 Halsbury's Statutes 74.

(*f*) See the Seed Regulations 1922 and 1935 (*supra*).

seeds, to their variety, purity and germination, and in the case of seed potatoes, as to their class, variety, size and dressing, and, in either case as to any other prescribed matters. Statutory statements must include a statement that the seeds have been tested in accordance with the provisions of the 1920 Act (g). Exemptions from these requirements may be granted by the M. of A. (h). [272]

A seed test may be made either at an official seed-testing station established under the Act, or at some testing station licensed by the M. of A.; in the case of garden seeds, the test may be made as above or in any other sufficient manner (i). The official seed-testing station for England and Wales is at Huntingdon Road, Cambridge. On a sale of seeds at any time other than in the months of August and September, the date of the relative test shall be not earlier than August 1 immediately preceding the sale; on a sale in August or September, the relative test must have been made at any time on or after August 1 in the preceding year. [273]

For the purpose of any legal proceedings on a contract for the sale of seeds being seeds to which the 1920 Act applies, the statutory particulars are deemed to be true unless it is made to appear on a test that the particulars are untrue, or differ from the actual particulars by more than the prescribed limits of variation (k). A purchaser of seeds who desires a test for the purpose of checking or refuting a statutory statement of particulars may take a sample of the seeds within ten days of delivery to him at the place of delivery; the sample must be divided into two parts, one whereof is to be sent to the chief officer of the seed-testing station for test; the other part must be delivered or tendered to the seller of the seeds (l). [274]

For the purpose of checking and enforcement, any person, whether an officer of the Ministry or not, who is duly authorised by the M. of A., may enter premises where seeds or seed potatoes are sold or exposed for sale, or stored or exposed for sale without further recleaning, blending, or grading, and take samples without payment; the owner must supply the sampling officer with the required statement of particulars and the sample must be divided into two parts and dealt

(g) S. 1 (6); 1 Halsbury's Statutes 71.

(h) S. 1 (7); *ibid.* By a general licence of the M. of A., on a sale of wheat, barley, oats or rye, for seed on or before 30th April of the year following that in which the seed was harvested, the statutory particulars may be delivered within one month of the sale.

(i) S. 2 (1); *ibid.*

(k) S. 6; *ibid.*, 73. As to the effect of this provision, see *Finney & Co. v. Mell*, on appeal in 1925 from the Leeds Assizes. In this case the plaintiffs sued for the price of seeds and defendant counterclaimed for damages, as the seeds had proved a failure; the particulars required by s. 1 of the 1920 Act were given on the sale of the seeds, and no sample was drawn and submitted for test by the purchaser. At the hearing at the Assizes, the court felt bound by s. 6 (1) to find for the plaintiffs, but intimated that otherwise the defendant would have succeeded on both claim and counterclaim. On appeal, this decision was affirmed, and in the course of his judgment, *BANKES, L.J.*, is reported to have said that the defendant seemed to have a legitimate grievance in that the statute intended for the protection of farmers had lamentably failed; it could not be too widely known that if a farmer desired to challenge the statement in seed merchants' catalogues and invoices, his proper course is to take a sample of the seed delivered to him, and to do that within ten days. This case does not appear to be reported in any of the law reports, but is noted in the publications of the National Farmers Union, to whom the contributor is indebted for the foregoing information.

(l) S. 6 (2); 1 Halsbury's Statutes 73.

with in the prescribed manner (*m*). Methods of sampling are prescribed by Art. 5 of the Regulations of 1922. [275]

The Act of 1920 does not apply to (1) a sale of seeds to a person purporting to purchase them with a view to cleaning them before they are sold or exposed for sale, (2) a sale with an undertaking by the purchaser to test the seeds or cause them to be tested before selling or exposing for sale, or not to resell to a seed merchant unless a similar undertaking is taken from him, (3) a sale of seeds or seed potatoes for delivery outside the United Kingdom, (4) a sale or exposure for sale of seeds or seed potatoes not to be used for sowing or planting (*n*). [276]

The sale or exposure for sale, or knowingly sowing any seeds to which the Act applies, which contain more than the prescribed percentage of the seeds of any prescribed injurious weeds, is prohibited (*o*). The prescribed injurious weeds are : Docks and Sorrels (*Rumex spp.*), Cranesbills (*Geranium spp.*), Wild Carrot (*Daucus carota, L.*), Yorkshire Fog (*Holcus lanatus, L.*), Soft Brome Grass (*Bromus mollis, L. et spp.*) ; the prescribed maximum quantity of injurious weed seeds is 5 per cent. by weight (Seeds Regulations, 1922, Art. 4 (1) (2)). [277]

The M. of A. is empowered to make regulations for the purpose of carrying the Act into effect, after consultation with representatives of the interests concerned, and with the Forestry Commissioners in the case of forest trees ; any such regulations are to be laid before Parliament (*p*). The Minister may also establish and maintain official seed-testing stations (*q*). Expenses incurred by the Minister in the execution of the Act, up to an amount approved by the Treasury, are defrayed out of moneys provided by Parliament (*r*). [278]

The offences created by the Act of 1920 are :

- (1) failure to comply with, or contravention of, any provision of the Act or any undertaking given under the Act, or any condition of an exemption granted under the Act (*s*) ;
- (2) making or causing to be made any statement which is required to be delivered or displayed under the Act, which is false in any material particular (*t*) ;
- (3) obstructing or impeding in the execution of his duties under the Act any person authorised to enter premises (*u*), under penalty, on summary conviction, not exceeding £5 for a first offence, and not exceeding £10 for a second or subsequent offence (*a*) ;
- (4) (a) Tampering with seeds or seed potatoes so as to procure that any sample taken under the Act does not represent the bulk ; (b) otherwise tampering with any sample taken under the Act ; (c) with intent to deceive, sending, causing or allowing to be sent to any seed-testing station or person to be tested for the purposes of the Act, a sample which to his knowledge does not correctly represent the bulk ; penalty, on summary conviction, fine not exceeding £20 or imprisonment not exceeding six months (*b*).

(*m*) S. 4 ; 1 Halsbury's Statutes 72.

(*o*) S. 3 ; *ibid.*, 72.

(*q*) S. 12 ; *ibid.*, 75.

(*s*) S. 8 (1) (a) ; *ibid.*, 74.

(*u*) S. 9 ; *ibid.*

(*b*) S. 10 ; *ibid.*, 75.

(*n*) S. 5 ; *ibid.*, 73.

(*p*) S. 7 ; *ibid.*, 74.

(*r*) S. 13 ; *ibid.*

(*t*) S. 8 (1) (b) ; *ibid.*

(*a*) Ss. 8, 9 ; *ibid.*

Proceedings may be instituted by the M. of A. only, and an offence may be treated as having been committed either where the offence was actually committed or where the defendant is for the time being resident (*c*). Proceedings for making a false statement as to the class or variety of seed potatoes may be commenced at any time within twelve months of the date on which the alleged offence was committed (*d*). The usual time limit of six months applies to all other summary proceedings under the Act of 1920. [279]

The Adulteration of Seeds Acts, 1869 and 1878 (*e*).—These statutes (which are now but little used) impose penalties, recoverable summarily, not exceeding £5 for a first offence, or £50 for a subsequent offence, on any person who with intent to defraud kills or causes to be killed any seeds ; or dyes or causes to be dyed any seeds ; or sells or causes to be sold any killed or dyed seeds : on conviction for a second or subsequent offence the court may, in addition to imposing a fine, order the offenders' name, occupation, place of abode or place of business, and particulars of his punishment to be published at the expense of the offender (*f*). Intent to defraud any particular person need not be proved (*g*). Proceedings must be taken within twenty-one days from the date of the commission of the offence (*h*). The term "to kill seeds" means to destroy by artificial means the vitality or germinating power of such seeds ; the term "to dye seeds" means to apply to seeds any process of colouring, dyeing or sulphur smoking (*i*). [280]

Poisoned Grain.—The protection of Animals Act, 1911 (*k*), prohibits, under a penalty not exceeding £10 on summary conviction, the selling, offering, exposing for sale or giving away of any grain or seed which has been rendered poisonous except for *bona fide* use in agriculture, and also the putting or placing in or upon any land or building of any poison or any fluid or edible matter (not being sown seed or grain) which has been rendered poisonous. The Protection of Animals (Amendment) Act, 1927 (*l*), provides a defence to a charge of putting or placing poisonous substances in or upon land or buildings for the purpose of destroying insects or vermin in the interests of public health, agriculture, the protection of other animals, or for manuring the land, provided all reasonable precautions are taken for the protection of dogs, cats, fowls or other domestic animals and wild birds. [281]

(*c*) S. 11 ; 1 Halsbury's Statutes 75.

(*d*) 1925 Act, s. 1 (1) ; 1920 Act, s. 11 (3) ; *ibid.*, 75, 138.

(*e*) 1 Halsbury's Statutes 60, 66.

(*f*) 1869 Act, s. 3 ; *ibid.*, 60.

(*g*) *Ibid.*, s. 5 ; *ibid.*, 61.

(*h*) *Ibid.*, s. 7 ; *ibid.*.

(*i*) *Ibid.*, s. 2, as amended by 1878 Act, s. 2 ; 1 Halsbury's Statutes 60, 66.

(*k*) S. 8 ; *ibid.*, 377.

(*l*) S. 1, amending s. 8 of the 1911 Act ; *ibid.*, 377, 389.

SELECTED GENERATING STATIONS

See ELECTRICITY SUPPLY.

SENIOR SCHOOLS

See CENTRAL AND SENIOR SCHOOLS.

SEPARATELY RATED AREA

See SPECIAL RATES.

SERVANTS, REGISTRIES FOR

See EMPLOYMENT AGENCIES.

SETTLEMENT AND REMOVAL

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See also title : PUBLIC ASSISTANCE, and the titles there listed.

Introduction.—The existing law is contained in the Poor Law Act, 1930 (*a*), but there is a considerable amount of case law (*b*) to be considered in interpreting the statutory provisions. The majority of these cases have been decided on corresponding provisions in former statutes.

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Settlement. *Derivative Settlement* (*c*).—Until a person acquires a settlement of his own or derives a settlement from her husband, that person (*a*) if a legitimate child shall take and follow, up to the age of 16, the settlement of his father or, if and so long as his father has no settlement, the settlement which the mother had immediately before her marriage to his father, but if after the death of the father the mother acquires a settlement (not being a derivative settlement), shall take and follow up to the age of 16 that settlement; (*b*) if an illegitimate child shall take and follow, up to the age of 16, the settlement of

(*a*) 12 Halsbury's Statutes 968. Unless otherwise indicated, statutory references in this title will be to this Act.

(*b*) See 37 Digest, pp. 237—358.

(*c*) For the case law, see 37 Digest, pp. 239—247.

his mother; and shall in either case retain the settlement which he had at the age of 16 (d).

The derivative settlement of a person who is over 16 at the date of the inquiry is no longer subject to change with the parent's settlement, as it had been before the age of 16, but is retained until the acquisition of another settlement by the child itself. So long, however, as the child, although above the age of 16, lives with its parent as part of the family and has not acquired any new settlement in its own right, but retains the settlement derived from the parent, it is not removable from any county or county borough, from which the parent is not removable (e). A child under the age of 16 still derives a settlement from his parent even if the child has been abandoned by his parent, or if the father deserted his wife and child, but the child did not reside with the mother after the desertion (f). An illegitimate child, whilst under the age of 16, derives not only such settlement as his mother may acquire in her own right, but also the settlement of her husband whom she may subsequently marry (g).

If any person, whether legitimate or illegitimate, who has attained the age of 16, has not acquired a settlement nor derived one from her husband, and it cannot be shewn what settlement has been derived from a parent without inquiring into the derivative settlement of that parent, that person is to be deemed to be settled in the county or county borough in which he was born (h).

Where the person sought to be removed is over 16 the settlement will be that derived from his father or widowed mother, as the case may be, and if the parent has never acquired a settlement in his or her own right, but his or her place of birth is known, and no evidence is forthcoming to shew that the parent has a derived settlement, the poor person will take the birth settlement of the parent (i), but if it is shewn that the person had a derived settlement which superseded his or her birth settlement, the person must then be deemed to be settled in the county or county borough in which such person was himself born (k). Whatever the age of the person may be over 16, unless the person has since the age of 16 acquired a settlement for himself, he retains the derivative settlement, if any, which he had from his father or mother at the age of 16 (l). Prohibition as to "double derivation" of the parent does not apply to the case of children under the age of 16 (m).

(d) S. 85 (1); 12 Halsbury's Statutes 1009.

(e) *Mitford and Launditch Union v. Wayland Union* (1890), 25 Q. B. D. 164; 37 Digest 316, 1143; *Reigate Union v. Croydon Union, Highworth & Swindon Union v. Westbury-on-Severn Union, Medway Union v. Bedminster Union* (1889), 14 App. Cas. 465; 37 Digest 239, 317.

(f) *Manchester Overseers v. Ormskirk Union* (1890), 24 Q. B. D. 678; 37 Digest 246, 406; *L.C.C. v. Berkshire County Council* (1935), 153 L. T. 463; Digest (Supp.).

(g) *R. v. St. Mary, Newington (Inhabitants)* (1843), 4 Q. B. 581; 12 L. J. (M. C.) 68; 37 Digest 248, 433.

(h) S. 85 (3); 12 Halsbury's Statutes 1009. As to a child adopted under the Adoption of Children Act, 1926; 9 Halsbury's Statutes 827, see *Coventry Corp. v. Surrey County Council*, [1935] A. C. 199; Digest (Supp.).

(i) *Liverpool Union v. Portsea Overseers* (1884), 12 Q. B. D. 303; 37 Digest 239, 318.

(k) *Woodstock Union v. St. Pancras* (1878), 4 Q. B. D. 1; 37 Digest 248, 430; *Headington Union v. St. Olave's Union* (1884), 13 Q. B. D. 29; 37 Digest 248, 431.

(l) *Dorchester Union v. Poplar Union* (1888), 21 Q. B. D. 88; 37 Digest 243, 356; *St. Pancras Union v. Norwich Incorporation Guardians* (1887), 18 Q. B. D. 521; 37 Digest 247, 411.

(m) *West Derby Union v. Atcham Union* (1889), 24 Q. B. D. 117; 37 Digest 241, 332; *Wycombe Union v. Barton-upon-Irwell Union*, [1927] A. C. 217; 37 Digest 241, 335.

A married woman, unless she has been deserted by her husband, shall take and follow the settlement of her husband and shall retain the settlement which she thus had at the date of his death or on the dissolution of the marriage until she acquires or derives another settlement; provided that if her husband had no settlement she shall not by reason of her marriage cease to retain the settlement which she had immediately before her marriage to him (*n*).

A wife takes the settlement of her husband whether his settlement is an original or derivative settlement (*o*), but a widow who had acquired no settlement in her own right since her husband's death, and whose husband never had acquired a settlement for himself, and was not shown to have derived any settlement, is settled in the place of her husband's birth, and her children by such husband would take the same settlement (*p*).

A woman who has contracted a bigamous marriage in a *bona fide* belief that the man was a widower does not acquire the settlement of the "husband," neither do the children of a bigamous marriage (*q*).

A woman who marries a man without a settlement does not lose her own settlement on his death (*r*). Her settlement before her marriage remains, if the husband has no settlement (*s*). Nor is her settlement suspended by marrying a man who has no settlement in England (*t*). The wife of an Irishman, who has no settlement in England may, if deserted by him, be removed to her maiden settlement (*u*). If the husband's settlement cannot be ascertained, the wife retains her maiden settlement (*a*).

A married woman deserted by her husband retains and follows his settlement, until she acquires a settlement for herself (*b*). [283]

Settlement by Birth (*c*).—A person is deemed to be settled in the county or county borough where born until it is shewn that he has derived or acquired a settlement elsewhere, or is presumed to be settled elsewhere. If the father or mother has no settlement, or the settlement cannot be ascertained, the birth settlement comes into operation (*d*). This applies to persons born in England of Irish parents who have no settlement in England (*e*). A person born in a poor law institution is, as to settlement by birth, deemed to be born in the county or county borough in which the mother was residing before she last became chargeable as an inmate of the institution (*f*).

(*n*) S. 85 (2); 12 Halsbury's Statutes 1009.

(*o*) *West Ham Union v. St. Giles-in-the-Field Overseers* (1890), 25 Q. B. D. 272; 37 Digest 242, 341.

(*p*) *Great Yarmouth v. London (City)* (1878), 3 Q. B. D. 232; 37 Digest 240, 320; *Liverpool Union v. Portsea Overseers* (1884), 12 Q. B. D. 303; 37 Digest 239, 318.

(*q*) *Kirkcaldy and Dysart Parish Council v. Traquair Parish Council*, [1915] S. C. 1124; 37 Digest 242, 343*i*.

(*r*) *St. Giles's v. St. Margaret's, Westminster* (1717), 1 Sess. Cas. K. B. 104; 37 Digest 243, 348.

(*s*) *Westham Parish v. Chiddington Parish* (1726), 2 Stra. 683; 37 Digest 243, 349.

(*t*) *R. v. St. Botolph, Bishopsgate (Inhabitants)* (1755), Say. 198; 37 Digest 243, 350.

(*u*) *R. v. Nottingham (Inhabitants)* (1827), 7 B. & C. 615; 37 Digest 243, 353.

(*a*) *R. v. Birmingham (Inhabitants)* (1846), 8 Q. B. 410; 37 Digest 243, 357.

(*b*) S. 86; 12 Halsbury's Statutes 1011; *Lancashire County Council v. Birkenhead Borough Council*, [1934] 2 K. B. 226; Digest (Supp.).

(*c*) For the case law, see 37 Digest, pp. 247—251.

(*d*) *R. v. All Saints, Derby (Inhabitants)* (1849), 14 Q. B. 207; 37 Digest 247, 415.

(*e*) *R. v. Preston (Inhabitants)* (1840), 12 Ad. & El. 822; 10 L. J. (M. C.) 22; *R. v. St. Botolph, Aldgate* (1841), 13 Jur. 1102, n.

(*f*) S. 92; 12 Halsbury's Statutes 1015.

No person whose mother was at the time of birth a prisoner in a prison or a patient in a lying-in hospital (g) is to be deemed to be settled by reason of his birth therein in the county or county borough in which the prison or hospital is situate, and in the case of an illegitimate child born in a lying-in hospital, the county or county borough in which the mother was settled at the time of birth is deemed to be the child's settlement of birth (h). [284]

Settlement by Residence (i).—Where a person has resided for the term of three years in a county or county borough in such manner and in such circumstances in each of those years as would, in accordance with the provisions contained in the Act, render him irremovable, he shall be deemed to be settled in that county or county borough (k).

To constitute residence, it is not necessary that it should be in a house or ordinary place of abode. It is sufficient if the person has remained in the county or county borough for the requisite period (l). It is not sufficient if the person merely returns at intervals to a house belonging to a parent or other relative, as in the case of a seaman (m).

Residence is not broken where a person is absent from the county or county borough through a contract of service (n), but it is broken where a man is absent on military service, even although his family continue to reside in the place where he resided prior to enlistment (o).

If the wife of a seaman changes her residence, without his knowledge, while he is away, the husband cannot be treated as constructively resident there whilst he is at sea, and the period of the wife's residence cannot be reckoned for the purpose of computing three years' residence for the acquisition of a settlement (p).

In order that a settlement by residence may be acquired there must have been residence for three consecutive years under such conditions, in each of such years, as would have created a status of irremovability. Each year must be complete and the circumstances must be such as not to affect acquisition of the status of irremovability in each year by the deduction of any excluded period. Receipt of relief, therefore, in any of the three years, prevents a settlement being acquired by residence during that period (q). In considering whether a person is removable in each year, reference must be made to the excluded periods for the purpose of irremovability (r). Although temporary absence does not constitute a break in residence, if the absence is prolonged it may (s).

A child under the age of 16 years cannot by residence become irremovable from a county or county borough, from which its parent or parents would be removable, and cannot therefore gain a settlement by

(g) See s. 163; 12 Halsbury's Statutes 1048; and *R. v. Manchester (Inhabitants)* (1821), 4 B. & Ald. 504; 37 Digest 250, 463.

(h) S. 92 (2); 12 Halsbury's Statutes 1015.

(i) For the case law, see 37 Digest, pp. 251—256.

(k) S. 86 (1); 12 Halsbury's Statutes 1011.

(l) *R. v. St. Leonard, Shoreditch (Inhabitants)* (1865), L. R. 1 Q. B. 21; 37 Digest 251, 469.

(m) *R. v. Stepney Union* (1884), 54 L. J. (M. C.) 12; 37 Digest 251, 471.

(n) *Manchester Overseers v. Ormskirk Union* (1886), 16 Q. B. D. 723; 37 Digest 253, 482.

(o) *Newark Union v. Maidstone Union* (1905), 98 L. T. 602; 37 Digest 253, 486.

(p) *West Ham Union v. Cardiff Union*, [1895] 1 Q. B. 766; 37 Digest 253, 485.

(q) *Dorchester Union v. Weymouth Union* (1885), 16 Q. B. D. 31; 37 Digest 253, 489; *St. Olave's Union v. Canterbury Union*, [1897] 1 Q. B. 682; 37 Digest 253, 487.

(r) See *post*, p. 142, 145.

(s) *Totnes Union v. Cardiff Union* (1886), 51 J. P. 183; 37 Digest 312, 1111; *Farnham Union v. Cambridge Union*, [1929] 1 K. B. 307; Digest (Supp.).

residence in such county or county borough. Residence by a child under 16 in a county or county borough from which such child is irremovable, may be coupled with residence in the same county or county borough by the child after attaining the age of 16, so as to make up a residence for the term of three years (*t*).

In a dispute submitted to the Minister of Health (1937) between the county of Surrey and the county of the North Riding of Yorkshire, he decided that a child under the age of 16 whose mother was dead and whose father had no settlement could acquire a settlement by residence. A child may acquire a settlement by residence with his father even if his father was debarred himself from acquiring a settlement by the receipt of relief (*u*).

A foreigner may acquire a settlement by residence (*a*).

If the person is detained as a patient of unsound mind he is deemed to be resident within the county or county borough to which he is chargeable (*b*).

A married woman deserted by her husband may acquire for herself a settlement by residence (*c*). She is deemed to be deserted for the purpose of this provision if she is turned out of her husband's house on account of adultery (*d*).

If a man takes lodgings for his wife and children in another county or county borough and does not live with them, there is no desertion if he contributes to their support (*e*). [285]

Settlement by Apprenticeship (f).—If any person is bound an apprentice by a duly stamped deed, writing or contract, and in pursuance thereof resides for forty days in any county or county borough, he shall be deemed to have acquired a settlement therein :

Provided that :

- (a) no settlement shall be acquired by being apprenticed to the sea service or sea-fishing service ; and
- (b) where a person bound as an apprentice by the council of a county or county borough or by a board of guardians has been assigned to a person other than the person to whom he was originally bound, no settlement by virtue of service of apprenticeship after the assignment shall be acquired unless the assignment was legally made in accordance with the provisions contained in this Act (*g*).

The settlement is acquired at the place of residence and not where the apprentice works for his master or where the apprentice lodges (*h*). No settlement is obtained by service under an instrument of apprenticeship.

(*t*) *Reigate Union v. Croydon Union, Highworth and Swindon Union v. Westbury-on-Severn Union, Medway Union v. Bedminster Union* (1889), 14 App. Cas. 465 ; 37 Digest 239, 317.

(*u*) *Daventry Union v. Coventry Union*, [1917] 1 K. B. 289 ; 37 Digest 253, 488.

(*a*) *Willesden Union v. Westminster Union*, [1926] 2 K. B. 356 ; 37 Digest 252, 475.

(*b*) Lunacy Act, 1890 ; 11 Halsbury's Statutes 115.

(*c*) S. 86 (2) ; 12 Halsbury's Statutes 1011. For irremovability of a deserted wife, see *post*, p. 148.

(*d*) *R. v. Maidstone Union* (1879), 5 Q. B. D. 31 ; 37 Digest 251, 472.

(*e*) *Hambledon Union v. Cuckfield Union* (1914), 84 L. J. (K. B.) 1265 ; 37 Digest 252, 474 ; *Paddington Union v. St. Matthew, Bethnal Green Union*, [1913] 1 K. B. 508 ; 37 Digest 252, 473.

(*f*) For the case law, see 34 Digest, pp. 502—525 and 37 Digest, pp. 256—267.

(*g*) S. 87 ; 12 Halsbury's Statutes 1012.

(*h*) *R. v. St. George's, Bloomsbury* (1845), 32 L. J. (M. C.) 217 ; 37 Digest 266, 618.

ship which is absolutely void (*i*) ; but inhabitation for the requisite period in service under an instrument which is not void, but merely voidable, is sufficient to confer a settlement (*k*).

Any person capable of executing a deed or written contract may bind himself in apprenticeship although he be under age at the time (*l*). He is bound by the indentures to serve his master during the time therein specified unless in the case of an infant the dissolution of the apprenticeship is to his benefit (*m*), or he become of age before the expiration of it, at which time, it appears, he may avoid the contract if he wishes (*n*). An articled*clerk gains a settlement by service and inhabitation under his articles in the same manner as other apprentices (*o*).

Where the apprentice is bound in a separate county or county borough from his master, he must at the same time be working for his master or his residence there must have some reference to the contract of apprenticeship to render it an inhabitation within the meaning of the Act (*p*). Where the apprentice inhabits forty days in each of two or more counties or county boroughs during the apprenticeship, he gains his settlement in that county or county borough in which he sleeps the last night of his apprenticeship in pursuance of the apprenticeship (*q*).

[286]

Settlement by Estate (*r*).—No provision in the Act may affect any exemption from removal to which by the common law the owner of an estate and the husband and wife of such an owner are entitled (*s*). A person who, having an estate in any county or county borough, resides in the county or county borough for forty days shall be deemed to have acquired a settlement therein, but shall not retain the settlement so acquired if he ceases to reside within ten miles of the county or county borough ; provided that, if he purchased the estate and has not paid as consideration therefor at least thirty pounds, he shall not be deemed to have acquired a settlement in the county or county borough unless he has resided on the estate for forty days, and shall not retain the settlement so acquired if he ceases to reside on the estate. Where a person having acquired a settlement under the section ceases by reason of non-residence to retain such settlement, any question as to his settlement shall be determined as if he had never acquired a settlement. For the purpose of the section, the expression "estate" means such an estate or interest as would immediately before the passing of the Poor Law Act, 1927, have been sufficient to support a claim to a settlement by estate (*t*).

If the person who gains a settlement by estate becomes of unsound

(*i*) *R. v. Stoke Dameral (Inhabitants)* (1828), 7 B. & C. 563 ; 37 Digest 257, 515 ; *R. v. Hipswell (Inhabitants)* (1828), 8 B. & C. 466 ; 37 Digest 257, 516 ; *R. v. Gravesend (Inhabitants)* (1832), 3 B. & Ad. 240 ; 37 Digest 257, 517.

(*k*) *R. v. St. Gregory (Inhabitants)* (1834), 2 Ad. & El. 99 ; 37 Digest 258, 521.

(*l*) *R. v. Saltren* (1784), Cald. Mag. Cas. 444 ; 1 Batt. 550 (6th ed.) ; *R. v. Arundel (Inhabitants)* (1816), 5 M. & S. 257 ; 34 Digest 505, 4182.

(*m*) *R. v. Great Wigston, Leicester (Inhabitants)* (1824), 3 B. & C. 484 ; 34 Digest 507, 4204 ; *Waterman v. Fryer*, [1922] 1 K. B. 499 ; 34 Digest 510, 4255.

(*n*) *Ex parte Davis* (1794), 5 Term Rep. 715 ; 34 Digest 516, 4323.

(*o*) *St. Pancras v. Clapham* (1860), 2 E. & E. 742 ; 37 Digest 258, 525.

(*p*) *R. v. Barmby-in-the-Marsh (Inhabitants)* (1806), 7 East, 381 ; 37 Digest 260, 547.

(*q*) *R. v. Ilkeston* (1825), 4 B. & C. 64 ; 37 Digest 261, 548 ; *R. v. Barton-upon-Irwell (Inhabitants)* (1863), 3 B. & S. 604 ; 37 Digest 267, 623.

(*r*) For the case law, see 37 Digest, pp. 268—280.

(*s*) S. 93 (8) ; 12 Halsbury's Statutes 1017.

(*t*) S. 88 ; *ibid.*, 1013.

mind, and is removed to a mental hospital, which is at a distance of more than ten miles of the place of residence, he thereby loses his settlement (a). The distance of ten miles must be measured in a straight line from the house which the person inhabits, to the boundary of the county or county borough in which the estate is situate (b).

If after gaining a settlement by estate the person leaves the county or county borough and inhabits at a greater distance than ten miles from it, but he afterwards returns to reside in the county or county borough, whilst he continues seised of or otherwise entitled to the estate, his settlement does not immediately revive; nor will he be deemed to have gained a fresh settlement by estate until after forty days' residence in the county or county borough, and if he parts with the estate and then comes back to the county or county borough to reside, his settlement by estate does not revive (c). Where, however, the children of a man who has acquired a settlement by estate, attain the age of 16 years whilst he continues to have the settlement, and he afterwards removes to a distance of more than ten miles from the county or county borough, so that he himself loses the settlement, the children will retain the settlement they derived from him at the time of their reaching 16 years of age (d). If, however, he leaves the county or county borough and resides at a greater distance than ten miles from it, while his children are under the age of 16 years, they, as well as the father and mother, lose their settlement there (e). [287]

Settlement by Renting (f).—If any person

- (a) rents, and by virtue of the renting occupies for a whole year, a tenement (g) in any county or county borough consisting of a separate and distinct dwelling-house or building, or of land, or of both, at a rent of not less than ten pounds ; and
- (b) himself pays the rent or at least ten pounds thereof ; and
- (c) is assessed to and pays the general rate in respect of that tenement (g) for one year ; and
- (d) resides in the county or county borough for forty days, he shall thereby acquire a settlement in the county or county borough (h).

Such a settlement is not acquired where a house is rented under a weekly tenancy. The renting must be for not less than the whole term of a year and there must be occupation by the person renting the tenement (g) for a like period (i). It is sufficient if the residence is in the county or county borough and it is not necessary that the residence should be on the property rented.

The question whether the premises constitute a "separate and distinct dwelling-house or building" is one to be determined by the facts of the particular case. A flat in a house comes within the

(a) *R. v. Whissendine (Inhabitants)* (1842), 2 Q. B. 450 ; 37 Digest 280, 772.

(b) *R. v. Saffron Walden (Inhabitants)* (1846), 9 Q. B. 76 ; 37 Digest 280, 776.

(c) *R. v. St. Giles in the Fields (Inhabitants)* (1842), 2 Q. B. 446 ; 37 Digest 280, 771.

(d) *R. v. Hendon (Inhabitants)* (1842), 2 Q. B. 455 ; 37 Digest 280, 773.

(e) *R. v. Llansaintffraidd (Inhabitants)* (1853), 2 E. & B. 803 ; 37 Digest 280, 774.

(f) For the case law, see 37 Digest, pp. 280—291.

(g) For meaning of tenement, see *A.-G. v. Whenley* (1786), 1 Term Rep. 137.

(h) S. 89 ; 12 Halsbury's Statutes 1014.

(i) *Nottingham County Council v. Middlesex County Council*, [1936] 1 K. B. 141 ; Digest Supp.

section (*k*), but the renting of a portion of the house where other occupants have the common use of the passage entrance does not come within the section (*l*).

Although the rent must be not less than ten pounds a year, it may be agreed that the amount be paid at a monthly rate. Where there is a joint tenancy of a house, the rent must be divided and must be more than ten pounds in order to confer the settlement on that person (*m*).

There is not occupation within the meaning of the section if the tenant has not the exclusive use of the premises (*n*). [288]

Settlement by Rates or Taxes (o).—If any person is charged with and pays the public taxes or local rates in respect of any tenement (*p*) of the yearly value of ten pounds at least, being his own property; or the local rates in respect of any land, or tenement consisting of a separate and distinct dwelling-house or building, rented by him at not less than ten pounds a year for one whole year; and resides in the county or county borough in which the tenement (*p*) is situated for forty days after such payment he shall thereby acquire a settlement in that county or county borough: provided that in the case of a tenement so rented no settlement shall be acquired unless the tenement is occupied for a whole year by virtue of the renting, and rent to the amount of ten pounds is actually paid for a year of the tenancy (*q*).

Where a settlement is gained by renting a tenement (*p*) the person may also have gained a settlement by rating, but the reverse is not the case, the condition for obtaining a settlement by rating being less onerous. Occupation of a separate and distinct dwelling-house or building is not necessary. It is sufficient if the tenement is occupied for a whole year.

The renting must be for not less than the whole term of a year, and there must be occupation by the person renting the tenement (*p*) for a like period, so a settlement by rating cannot be acquired by a weekly tenant who occupies a tenement for one year (*r*).

No settlement is gained by the occupation of a tenement if the rates are paid by a party not authorised by the occupier to make the payment (*s*). The receipt of relief does not prevent the acquisition of a settlement by renting or rating (*t*). [289]

Settlement by Estoppel (u).—Where an order has been made adjudging any person to be settled in a county or county borough named therein and ordering him to be removed thereto, then if the order has not been appealed against, or if any appeal against the order has been dismissed or abandoned, and if the person has been removed thereunder or has,

(*k*) *R. v. Great and Little Usworth and North Biddick (Inhabitants)* (1836), 5 Ad. & El. 261; 37 Digest 282, 803.

(*l*) *R. v. Elswick (Inhabitants)* (1860), 3 E. & E. 437; 37 Digest 283, 805.

(*m*) *R. v. Great Wakering (Inhabitants)* (1834), 5 B. & Ad. 971; 37 Digest 281, 783; *R. v. Aberdaron (Inhabitants)* (1841), 1 Q. B. 671; 37 Digest 281, 784; *R. v. Caverswall (Inhabitants)* (1839), 10 Ad. & El. 370; 37 Digest 281, 785.

(*n*) *R. v. St. Nicholas, Rochester (Inhabitants)* (1834), 5 B. & Ad. 219; 37 Digest 287, 847.

(*o*) For the case law, see 37 Digest, pp. 291—295.

(*p*) *R. v. Whitby Union* (1870), L. R. 5 Q. B. 325; 37 Digest 316, 1140; *Hendon Union v. Hampstead Union* (1898), 62 L. J. (M. C.) 170; 37 Digest 322, 1213.

(*q*) S. 90; 12 Halsbury's Statutes 1014.

(*r*) *Nottingham County Council v. Middlesex County Council*, [1936] 1 K. B. 141; Digest (Supp.).

(*s*) *R. v. St. Ann's, Blackfriars (Inhabitants)* (1828), 3 Man. & Ry. K. B. 383; *E. v. Brentworth (Inhabitants)* (1843), 3 E. & B. 637.

(*t*) *West Derby Union v. Vestry of Liverpool* (1882), 46 J. P. Jo. 372.

(*u*) For the case law, see 37 Digest, pp. 295—304.

after the service of the order, been relieved without actual removal by the council of the county or county borough to which he was ordered to be removed, the order shall be conclusive evidence for all purposes that the person was at the date thereof settled in the county or county borough (a).

The mere receipt of relief within a county or county borough is no proof of settlement (b). If, however, non-resident relief is authorised to a person residing out of the county or county borough granting the relief, this is *prima facie* evidence of a settlement in that county or county borough (c). There must be authorisation by the poor law authority of any such relief granted by a relieving officer (d). [290]

Irremovability (e). *General Provisions.*—No person may be removed nor may any order be made for the removal of any person from any county or county borough in which he has resided for one year next before the application for the order, but in computing the period of one year certain periods must be excluded.

Any time during which a person has been

- (a) serving in the naval, military or air service of the Crown as a seaman, marine, soldier or airman ; or
- (b) resident as an in-pensioner in Greenwich or Chelsea Hospital ; or
- (c) confined in an institution for lunatics ; or
- (d) resident as a patient in a hospital ; or
- (e) detained in an institution or resident in an approved home under the Mental Deficiency Act, 1913 (f) ; or
- (f) resident in a workhouse of, or otherwise in receipt of poor relief from, the council of a county or county borough or a board of guardians ; or
- (g) wholly or in part maintained by any rate or subscription raised in a parish in which he does not reside, not being a *bona fide* charitable gift ; or
- (h) a prisoner in a prison ; or
- (i) detained in a certified reformatory or industrial school ; or
- (j) detained in a retreat under the Habitual Drunkards Act, 1879 (g), or detained in or absent under licence from a state inebriate reformatory or a certified inebriate reformatory under the Inebriates Act, 1898 (h).

must not be regarded as interrupting his residence in the county or county borough, but shall for all purposes be excluded in the computation of the period of twelve months (i). [291]

Meaning of "Residence" (k).—Residence need not be in a house, or in any place ordinarily used for habitation. Sleeping in the open air

(a) S. 91 ; 12 Halsbury's Statutes 1015 ; 25 Halsbury's (2nd ed.), 421.

(b) *R. v. Chadderton (Inhabitants)* (1801), 2 East, 27 ; 37 Digest 295, 942 ; *R. v. Chatham (Inhabitants)* (1807), 8 East, 498 ; 37 Digest 295, 943 ; *R. v. Trowbridge (Inhabitants)* (1827), 7 B. & C. 252 ; 37 Digest 295, 944 ; *R. v. Coleorton (Inhabitants)* (1830), 1 B. & Ad. 25 ; 37 Digest 295, 948.

(c) *R. v. Edwinstone (Inhabitants)* (1828), 8 B. & C. 671 ; 37 Digest 296, 950 ; *R. v. Yarwell (Inhabitants)* (1829), 9 B. & C. 894 ; 37 Digest 296, 951 ; *R. v. Camrose (Inhabitants)* (1843), 2 Q. B. 380 ; 37 Digest 296, 953 ; *R. v. Hartpury (Inhabitants)* (1847), 8 Q. B. 566 ; 37 Digest 296, 954.

(d) *R. v. Little Marlow (Inhabitants)* (1847), 10 Q. B. 223 ; 37 Digest 296, 959 ; *R. v. Bradford (Inhabitants)* (1846), 8 Q. B. 571, n. ; 37 Digest 296, 960 ; *R. v. Crondall (Inhabitants)* (1847), 10 Q. B. 812 ; 37 Digest 296, 961.

(e) For the case law, see 37 Digest, pp. 305—328.

(f) 11 Halsbury's Statutes 160.

(g) 9 Halsbury's Statutes 945.

(h) *Ibid.*, 955.

(i) S. 98 (1) ; 12 Halsbury's Statutes 1016.

(k) 37 Digest 251, 256.

will constitute such residence. Residence is not broken by reason of the involuntary or temporary absence of the person from the county or county borough by night. Where, therefore, a destitute woman, who had resided for sixteen years in a poor law area, at the latter end of her residence gave up her lodgings and wandered about the area by day, sleeping on the steps of doors of houses, and then for three weeks sleeping in a refuge for houseless poor in an adjoining poor law area, but returning each day to the other area until she obtained admission into the workhouse of that area, it was held that she had acquired a status of irremovability in such area (*l*).

For some purposes a person may have more than one residence (*m*) ; but where a medical officer of a mental hospital lived in apartments in the hospital and was provided with board and lodging, but also had apartments in another poor law area in which his wife and children continuously resided, and he visited them from the Saturday to Monday, it was held that he must be taken to have resided in the area in which the mental hospital was situated, and that the wife and her children were therefore removable from the area in which the lodgings were, and to which they had become chargeable (*n*).

The wife of a foreigner having no settlement may acquire irremovability by residence (*o*). [292]

Break of Residence (p).—In general where there is an *animus revertendi* there is no break of residence. Where, for instance, a person resides for five years with his wife and family in one area, and then goes to work temporarily in another area, afterwards returning to his family, there is no break in residence if there is clear evidence of an *animus revertendi* (*q*). If, however, the person leaves the county or county borough to take up employment in another county or county borough, having no *animus revertendi*, but in fact returns after a short period, the absence will cause a break of residence if he had no residence to return to (*r*). There is a break of residence if there is no residence to which the person has a legal right to return (*s*).

The residence must be continuous, and if there is a break the time of residence begins to be reckoned *de novo*, and the status of irremovability if already acquired is lost (*t*). A break of residence is caused by the removal of a person under an order of removal (*u*).

Where a valid order of removal, which is unappealed against, has been duly made and executed, there is a break in the residence, no

(*l*) *R. v. St. Leonard's, Shoreditch (Inhabitants)* (1865), L. R. 1 Q. B. 21; 37 Digest 251, 469. See also *Blackwell v. England* (1857), 8 E. & B. 541; 7 Digest 92, 532; *Berkshire County Council v. Reading Borough Council*, [1921] 2 K. B. 787; 38 Digest 273, 1902.

(*m*) *Walcot v. Botfield* (1854), Kay, 534; 11 Digest 311, 23.

(*n*) *R. v. Norwood* (1867), L. R. 2 Q. B. 457; 37 Digest 256, 505.

(*o*) *Tewkesbury Union v. Birmingham Union*, [1904] 2 K. B. 395; 37 Digest 318, 1161.

(*p*) For the case law, see 37 Digest, pp. 306—312.

(*q*) *R. v. Tacolnestone (Inhabitants)* (1849), 12 Q. B. 157; 37 Digest 309, 1092.

(*r*) *R. v. Glossop Union* (1866), L. R. 1 Q. B. 227; 37 Digest 310, 1097; *R. v. Brighton Directors of the Poor* (1854), 4 E. & B. 236; 37 Digest 311, 1099; *R. v. Worcester Union* (1874), L. R. 9 Q. B. 340; 37 Digest 310, 1098.

(*s*) *R. v. Worcester JJ., Re Winchcombe Union and Stourbridge Union* (1865), 12 L. T. 542; 37 Digest 311, 1102; *R. v. Glossop Union, supra*.

(*t*) *R. v. St. Ann's, Blackfriars (Inhabitants)* (1853), 2 E. & B. 440; 37 Digest 322, 1209; *R. v. St. Mary Arches, Exeter, Overseers* (1862), 1 B. & S. 890; 37 Digest 323, 1215.

(*u*) *R. v. Halifax (Inhabitants)* (1848), 12 Q. B. 111; 37 Digest 309, 1087; *R. v. Seend (Inhabitants)* (1848), 12 Q. B. 133; 37 Digest 308, 1086.

matter for how short a period the person may have been actually absent (a).

An absence for a merely temporary purpose, with an intention to return, is no break of residence; but an intention to return at a remote period, after a permanent absence, is not sufficient to prevent the absence from operating as a break of residence (b). Where the intention to return is after an indefinite period there is a break of residence (c). If there is no intention to return an absence for a very short period is sufficient to constitute a break of residence (d). To entitle a person to the benefit of constructive residence during a temporary residence, it is necessary, not only that he should intend to return, but that he should have a place of residence in the poor law area to which to return (e).

If an irremovable person leaves the county or county borough on a visit for a short time, retaining no residence therein, and afterwards returned to the county or county borough the absence does not create a break of residence (f). Absence during the harvest season was held to cause a break in the period of residence, but absence in special circumstances for so long as seven months may not be a break.

Where the status of irremovability by virtue of a year's residence is shown to have existed, it is for the party alleging that it has ceased to exist to prove that to be the case (g). Where a person left a situation in the district of one union and entered a home for feeble-minded in another district and there became insane and incapable of exercising any choice as to her residence, there was held to be such a break of residence as to destroy the status of irremovability (h).

In some instances a person may be considered to have two places of residence and it is then necessary to determine which should be taken for the acquisition of irremovability. If, for instance, a railway guard spends alternate nights at two different places but maintains a home for his wife at one of the places, his irremovability is in that area (i). If, however, a person is required to live in one area under a contract of service, such as in an institution, the place of residence is in that area and not in another area where his wife is living (k).

(a) *R. v. Caldecote (Inhabitants)* (1851), 17 Q. B. 52; 37 Digest 309, 1089.

(b) *R. v. Stapleton (Inhabitants)* (1853), 1 E. & B. 766; 37 Digest 310, 1094; *Wellington Overseers v. Whitchurch Overseers* (1863), 4 B. & S. 100; 37 Digest 310, 1095.

(c) *Totnes Union v. Cardiff Union* (1886), 51 J. P. 133; 37 Digest 312, 1111; *Wellington Overseers v. Whitchurch Overseers* (1863), 32 L. J. (M. C.) 189; 37 Digest 310, 1095.

(d) *Newark Union v. Glanford Brigg Union* (1877), 2 Q. B. D. 522; 37 Digest 308, 1084.

(e) *R. v. Stourbridge Union* (1865), 34 L. J. (M. C.) 179; 37 Digest 311, 1102; *R. v. Glossop Union* (1866), L. R. 1 Q. B. 227; 37 Digest 310, 1097.

(f) *R. v. St. Ives* (1872), L. R. 7 Q. B. 467; 37 Digest 311, 1105; *Guildford Union v. St. Olave's Union* (1872), 25 L. T. 803; 37 Digest 314, 1131. See also *Knaresborough Union v. Pateley Bridge Union* (1871), 23 L. T. 590; 37 Digest 311, 1104. See also *Ayr Parish Council v. Wigtown Parish Council*, [1913] S. C. 13; 37 Digest 258, g; and *Ipswich Union v. Forehoe Union* (1913), 77 J. P. 467.

(g) *R. v. Whitby Union* (1870), L. R. 5 Q. B. 325; 37 Digest 316, 1140; *Hendon Union v. Hampstead Union* (1893), 62 L. J. (M. C.) 170; 37 Digest 322, 1213.

(h) *Tendring Union v. Ipswich Union* (1908), 67 J. P. 304; 37 Digest 311, 1106.

(i) *Great Yarmouth Union v. Bethnal Green Union* (1907), 97 L. T. 440; 37 Digest 256, 506.

(k) *R. v. Norwood* (1867), 36 L. J. (M. C.) 91; 37 Digest 256, 505; *R. v. Stapleton (Inhabitants)* (1853), 22 L. J. (M. C.) 102; 37 Digest 310, 1094.

The place of a residence of a person is, however, normally the place where he eats, drinks and sleeps (*l*). [293]

Excluded Periods (m). (a) Service as a Seaman, Marine, Soldier or Airman.—The period during which a member of the territorial army attends an annual training camp is not a period during which he is "serving in the Military Forces of the Crown" within the meaning of this section (*n*). A soldier retains during his period of service his status of irremovability acquired immediately before his admission (*o*). The time during which a man is serving as a soldier must be excluded in reckoning residence for irremovability, and his wife and children are similarly affected (*p*). [294]

(b) Persons of Unsound Mind.—The time during which a married woman is maintained as a rate-aided patient in a mental hospital must be deducted from the period during which the husband must reside in a county or county borough in order to acquire a status of irremovability, the expense of such maintenance being regarded as relief to the husband (*q*). (See effect of Mental Treatment Act, 1930, *post*.) The patient must be confined in an institution for lunatics which is any "mental hospital, hospital or licensed house" (*r*). Inquiry should be made as to whether a patient is detained under a reception order made under the Lunacy Act, 1890 (*s*), or is detained as a temporary patient under the Mental Treatment Act, 1930 (*t*). It would appear that a patient who is treated in a mental hospital as a voluntary patient under the Mental Treatment Act, 1930, is not "confined" in an institution for lunatics but would apparently come within the provision as being "resident as a patient in a hospital." [295]

(c) Residence as a Patient in a Hospital.—It is sometimes difficult in practice to decide whether any particular institution or establishment is a "hospital" within the meaning of this section. The general rule would appear to be if a person enters a particular establishment temporarily for the purpose of being treated for some illness that establishment would be deemed to be a "hospital" notwithstanding the fact that the patient might remain in the establishment for several years (*u*). An establishment, however, in which imbeciles or persons suffering from epilepsy are not admitted, nor persons requiring skilled nursing

(*l*) *R. v. North Curry (Inhabitants)* (1825), 4 B. & C. 953; 38 Digest 501, 563. See also *Stoke-on-Trent Borough Council v. Cheshire County Council*, [1915] 79 J. P. 452; 19 Digest 577, 135; *Berkshire County Council v. Reading Borough Council* (1921), 85 J. P. 173; 33 Digest 273, 1902.

(*m*) For the case law, see 37 Digest, pp. 312—316.

(*n*) *Derbyshire County Council v. Middlesex County Council* (1935), 99 J. P. 391; Digest (Supp.).

(*o*) *Lewisham Union v. Wandsworth Union*, [1919] 2 K. B. 463; 37 Digest 315, 1137.

(*p*) As to irremovability of families, see also *R. v. East Stonehouse (Inhabitants)* (1848), 12 Q. B. 72; 37 Digest 318, 1156; *R. v. East Stonehouse (Inhabitants)* (1854), 3 E. & B. 596; 37 Digest 318, 1157; *R. v. East Stonehouse (Inhabitants)* (1855), 4 E. & B. 901; 37 Digest 318, 1169; *R. v. Kingston Union* (1869), 21 L. T. 488; 37 Digest 318, 1159; *Easton Overseers v. St. Mary, Marlborough Overseers* (1867), L. R. 2 Q. B. 128; 37 Digest 318, 1165.

(*q*) *R. v. St. George, Bloomsbury Overseers* (1863), 4 B. & S. 108; 37 Digest 313, 1122; *Ipswich Union v. West Ham Union* (1887), 20 Q. B. D. 407; 37 Digest 313, 1117.

(*r*) Lunacy Act, 1890, s. 341; 9 Halsbury's Statutes 130.

(*s*) 9 Halsbury's Statutes 17 *et seq.*

(*t*) 23 Halsbury's Statutes 154 *et seq.*

(*u*) *Ormskirk Union v. Chorlton Union*, [1903] 2 K. B. 498; 37 Digest 314, 1133.

and medical attention, even although a few incurable children may be received, has been deemed to be not a hospital (a). A convalescent home where nurses are employed and regular medical attention is given is a "hospital" (b). On the other hand, a home for incurables where no special medical treatment is provided and only medical treatment for the usual children's ailments, and there is no limit to the time during which children might remain, is not a "hospital" (c). [296]

(d) Receipt of Relief.—The receipt of relief either in an institution or otherwise does not constitute a break of residence, but the time during which such relief is received must be deducted from the period of residence (d). [297]

Constructive relief to a widow by the chargeability of her children causes an "excluded period" (e), as by sect. 18 of the Poor Law Act, 1930 (f), all relief given to or on account of a wife or child under the age of 16 years, not being blind or deaf and dumb, shall be considered as given to the father of the child, or to the husband of the mother, or if the mother of the child is unmarried or a widow, the mother of the child. During any period therefore that a child is chargeable to a poor law authority, in any home or institution or elsewhere, the residence of the parent during that period must be excluded in the twelve months for the purpose of acquiring irremovability, notwithstanding that the parent may not be residing in the county or county borough to which the child is chargeable. Under a proviso to this section it is directed that where the husband of a woman is beyond the seas, or in legal custody, or in confinement in a licensed house or asylum, as a lunatic or idiot, or is living apart from her, all relief given to her and to her child shall, notwithstanding her coverture, be considered as given to her in the same manner and subject to the same conditions as if she were a widow. Relief given to a wife whose husband is living apart from her must be considered by reason of this proviso as given to her and not as given to the husband. In such circumstances the husband is not therefore deemed to be in receipt of relief (i). [298]

During the continuation of the chargeability of a person's children under the age of 16, he cannot acquire a settlement or irremovability elsewhere even if he removes to another county or county borough (e).

It is considered that medical relief consisting only of medical examination by the district medical officer, does not constitute relief so as to cause an "excluded period" as was decided in the quarter sessions case of *Bethnal Green v. West Ham* (1909). [299]

(a) *Ormskirk Union v. Lancaster* (1912), 107 L. T. 620; 37 Digest 315, 1135. See also *St. Olave's Union v. Canterbury Union*, [1897] 1 Q. B. 682; 37 Digest 253, 487, approving *Dorchester Union v. Weymouth Union* (1885), 16 Q. B. D. 31; 37 Digest 253, 489.

(b) *Christchurch Union v. St. Mary, Islington Union* (1906), 70 J. P. 247; 37 Digest 255, 500.

(c) *Tendring Union v. Woolwich Union*, [1923] 1 K. B. 121; 37 Digest 315, 1136.

(d) *R. v. Harrow on the Hill (Inhabitants)* (1848), 12 Q. B. 103; 37 Digest 312, 1114; *R. v. Shavington cum Gresty (Inhabitants)* (1851), 17 Q. B. 48; 37 Digest 318, 1118; *R. v. St. Mary, Islington, Middlesex* (1862), 3 B. & S. 46; 37 Digest 318, 1119; *Ipswich Union v. West Ham Union* (1887), 20 Q. B. D. 407; 37 Digest 318, 1117.

(e) *West Ham Union v. Poplar Union* (1906), 94 L. T. 769; 37 Digest 313, 1120.

(f) 12 Halsbury's Statutes 979.

(i) *Middlesex County Council v. Essex County Council* (1940). See "Reference to Minister of Health," p. 160.

(e) Maintenance otherwise than by a *bona fide* Charitable Gift.—Maintenance in a home supported by offertories collected in various churches and by charitable subscriptions from all parts of England does not come within this provision (l). [300]

(f) Prisoners.—If the person be a prisoner, the time of the imprisonment is merely deducted from the whole time of residence ; and if after such deduction there remain a residence of one year, not including any time during which he may be receiving relief, he will be irremovable. There is no break even if the prisoner is outside the poor law area (m).

A woman, whose husband was in prison, was held to be removable to his place of settlement (n). [301]

Temporary Sickness.—A person is irremovable during the time he is chargeable on account of temporary sickness, as no removal order may be made in respect of a person who becomes chargeable owing to sickness or accident unless the justices making the order state that they are satisfied that the sickness or accident will produce permanent disability (o). The justices must be satisfied by such medical evidence as is available that an order may properly be made. It is not sufficient for the sickness to be permanent, but it must be such as to produce "permanent disability." The condition must be such as exists at the time of the application for the order and not at the time the person became chargeable (p). Thus a person may be suffering from temporary sickness on becoming chargeable and later be removable on becoming certified to be suffering from sickness which will produce permanent disability, or may become chargeable owing to destitution and subsequently become irremovable on account of temporary sickness after chargeability commenced. Mere pregnancy does not constitute sickness (q). Blindness is sickness within the section (r). Sickness is a question of fact for justices to determine and their decision is final (s).

The sickness refers to the person who is actually chargeable and is to be removed under the order of removal. The wife and children of such a person do not become irremovable by reason of the sickness of the head of the family if they are not otherwise irremovable (t). [302]

Irremovability of Wife or Children (u).—Whenever any person has a wife or children whose settlement is in the same county or county borough as his or her own, the wife and children are removable from any county or county borough from which he or she would have been removable, and are not removable from any county or county borough from which he or she would be irremovable, subject to a special proviso

(l) *Fulham Union v. Isle of Thanet Union* (1881), 7 Q. B. D. 539 ; 27 Digest 314, 1124.

(m) *R. v. Holbeck Overseers* (1851), 16 Q. B. 404 ; 37 Digest 314, 1126 ; *Hartfield v. Rotherfield* (1852), 17 Q. B. 746 ; 37 Digest 314, 1127 ; *R. v. St. Andrew, Holborn (Inhabitants)* (1852), 17 Q. B. 746 ; 37 Digest 314, 1128 ; *R. v. Potterhanworth (Inhabitants)* (1858), 1 E. & E. 262 ; 37 Digest 316, 1141.

(n) *Glamorgan County Council v. Birmingham Corp.* (1932), 148 L. T. 16 ; Digest Supp.

(o) S. 95 ; 12 Halsbury's Statutes 1020.

(p) *R. v. Priors Hardwick (Inhabitants)* (1849), 18 L. J. (M. C.) 177 ; 37 Digest 329, 1322 ; *R. v. Cuckfield (Inhabitants)* (1855), 25 L. J. (M. C.) 4 ; 37 Digest 306, 1066.

(q) *R. v. Huddersfield (Inhabitants)* (1857), 26 L. J. (M. C.) 169 ; 37 Digest 306, 1068.

(r) *R. v. Bucknell (Inhabitants)* (1854), 23 L. J. (M. C.) 129 ; 37 Digest 306, 1067.

(s) *R. v. Whittlesey* (1863), 32 L. J. (M. C.) 78.

(t) *R. v. St. George, Middlesex (Inhabitants)* (1862), 31 L. J. (M. C.) 85 ; 37 Digest 329, 1325.

(u) For the case law, see 37 Digest, pp. 316—323.

as to a married woman deserted by her husband (*a*). If a wife becomes chargeable in the absence of her husband, she may be removed to the place of his last legal settlement, if he has one, or, if not, then to the place of her maiden settlement (*b*). Where the husband has no settlement the wife, if living with her husband, although she become chargeable, cannot legally be removed from him to the place of her maiden settlement without the consent of both, even if removal would otherwise be valid (*c*). A break of the husband's residence renders the wife and children removable, notwithstanding their unbroken personal residence in the area (*d*). [303]

Deserted Married Woman (*e*).—If a married woman deserted by her husband resides in any county or county borough for one year after such desertion in such a manner as would, if she were a widow, render her exempt from removal she is irremovable from the county or county borough unless her husband returns to cohabit with her (*f*). It is submitted that the period of residence to enable a deserted married woman to acquire irremovability cannot commence until after desertion, and that she cannot add a period of residence with her husband to a period after desertion in order to compute the twelve months for the acquisition of irremovability. The question whether a wife is "deserted" is a question of fact for the justices to determine (*g*).

If cohabitation has ceased, whether by the adverse act of the husband or the wife, or even by the mutual consent of both, "desertion" becomes impossible to either, at least until their common life and home have been resumed. The refusal by either at the request of the other to resume conjugal relations does not in itself constitute desertion (*h*). There need not necessarily, however, be actual cohabitation under the same roof; there may be sufficient cohabitation where the parties are in fact living apart, as in the case of married persons in domestic service (*i*).

There may be desertion even if the conduct of the husband is justifiably due to his wife's adultery (*j*). It must be remembered that desertion for the purpose of this section has a broader meaning than "running away and leaving" under the Vagrancy Act, 1824 (*k*). But

(*a*) S. 93 (2); 12 Halsbury's Statutes 1016.

(*b*) *Much Hoole Overseers v. Preston Overseers* (1851), 17 Q. B. 548; 37 Digest 339, 1429.

(*c*) *R. v. Leeds (Inhabitants)* (1844), 5 Q. B. 916; 37 Digest 317, 1147. And see *R. v. St. George-in-the-East (Inhabitants)* (1870), L. R. 5 Q. B. 364; 37 Digest 318, 1160; *R. v. Carleton* (1775), Burr. S. C. 813; 37 Digest 243, 351.

(*d*) *R. v. Llanelli (Inhabitants)* (1851), 17 Q. B. 40; 37 Digest 310, 1093; *R. v. Manchester (Inhabitants)* (1851), 17 Q. B. 46, n.; 37 Digest 319, 1172. See also *Hambledon Union v. Cuckfield Union* (1914), 84 L. J. (K. B.) 1265; 37 Digest 252, 474.

(*e*) For the case law, see 37 Digest, p. 319. As to desertion generally, see 27 Digest, pp. 306—323, 555, 556.

(*f*) S. 93 (2); 12 Halsbury's Statutes 1016.

(*g*) *R. v. Davidson, etc., Durham JJ.* (1889), 5 T. L. R. 199; 27 Digest 307, 2841; *Re Duckworth* (1889), 5 T. L. R. 609; 27 Digest 315, 2923.

(*h*) *Fitzgerald v. Fitzgerald* (1869), L. R. 1 P. & D. 694; 27 Digest 307, 2845; *Pape v. Pape* (1887), 20 Q. B. D. 76; 27 Digest 317, 2945; *R. v. Leresche*, [1891] 2 Q. B. 418; 27 Digest 318, 2910.

(*i*) *Bradshaw v. Bradshaw*, [1897] P. 24; 27 Digest 554, 6086.

(*j*) *R. v. Maidstone Union* (1879), 5 Q. B. D. 31; 37 Digest 251, 472.

(*k*) S. 4; 12 Halsbury's Statutes 915. Although this section is commonly spoken of as dealing, *inter alia*, with the desertion of wives and children, the words actually used are those here quoted.

there must be reasonable evidence of desertion (*l*). If a man separates from his wife owing to a quarrel and he subsequently cohabits with another woman there is "desertion" (*m*). [304]

Irremovability of Widow.—No woman residing in a county or county borough with her husband at the time of his death shall be removed, nor shall any order be made for her removal, from the county or county borough from one year after his death, if she so long continues a widow (*n*). This section applies even although the woman and her former husband were in receipt of non-settled relief at the expense of the county or county borough in which the man was settled before his death. On becoming a widow, if the woman still requires relief, she must be relieved at the expense of the county or county borough in which she is residing as no order of removal can be obtained, but at the end of twelve months if she is still in receipt of relief an order of removal may be obtained and the county or county borough of settlement may be asked to grant non-resident relief. The residence with her husband at the time of his death may be actual or constructive: so, where the widow of a sailor who has died at sea becomes chargeable within twelve months after his death, she is irremovable if he has returned to his home in the area whilst he was at sea (*o*). If a widow has ceased to reside in the county or county borough in which she resided at the time of his death, she loses the exemption from removal even although she returned within the twelve months (*p*). [305]

Irremovability of Children.—No child under the age of 16 residing in a county or county borough with his father, mother, step-father, step-mother or reputed father shall be removed, nor shall any order be made for the removal of the child from the county or county borough, in any case where the father, mother, step-father, step-mother or reputed father may not lawfully be removed therefrom (*q*). If a widow leaves her children in a workhouse and removes to another county or county borough and so ceases to be removable the children are removable (*r*). [306]

Children within the Age of Nurture.—It is a general rule that no child can be separated from its mother whilst it is below the age of seven years, this being the age of nurture, even though the parent consent to or wish it (*s*). If, however, at the time that a child within the age of nurture becomes chargeable, it is not in fact residing with its mother, it may be removed to its place of settlement on the same grounds as a child above that age (*t*). When a child, thus residing with its mother for nurture, but having its place of settlement elsewhere,

(*l*) *R. v. Cookham Union* (1882), 9 Q. B. D. 522; 37 Digest 320, 1184.

(*m*) *R. v. St. Mary, Islington Overseers* (1870), L. R. 5 Q. B. 445; 37 Digest 319, 1177. See also *Southwark Union v. City of London Union*, [1906] 2 K. B. 112; 37 Digest 319, 1179; *Eastbourne Union v. Croydon Union*, [1910] 2 K. B. 16; 37 Digest 320, 1182.

(*n*) S. 93 (3); 12 Halsbury's Statutes 1017.

(*o*) *R. v. East Stonehouse (Inhabitants)* (1855), 24 L. J. (M. C.) 121; 37 Digest 318, 1169.

(*p*) *R. v. St. Marylebone (Inhabitants)* (1851), 16 Q. B. 299; 37 Digest 307, 1080.

(*q*) S. 93 (4); 12 Halsbury's Statutes 1017.

(*r*) *West Ham Union v. Poplar Union* (1902), 66 J. P. 504; 37 Digest 308, 1081. See also *Hambledon Union v. Cuckfield Union* (1914), 84 L. J. (K. B.) 1265; 37 Digest 252, 474, and *Paddington Union v. Westminster Union*, [1915] 2 K. B. 644.

(*s*) *R. v. Birmingham (Inhabitants)* (1848), 5 Q. B. 210; 37 Digest 320, 1187; *Skeffeth Parish v. Walford Parish* (1780), 2 Sess. Cas. 89; 37 Digest 320, 1186.

(*t*) *R. v. St. Clement Danes (Inhabitants)* (1862), 3 B. & S. 143; 37 Digest 321, 1191.

becomes chargeable, the poor law area in which it resides must relieve it, and may then obtain an order upon the poor law area in which the child is settled to reimburse them (u). [307]

Alteration in Area.—Where a person is irremovable from any county or county borough, and the place wherein that exemption has been wholly or partly acquired is transferred to another county or county borough, he shall so long as he continues to reside in such other county or county borough be irremovable therefrom (a). [308]

Patients in Public Health Hospitals.—Points of difficulty arise in the application of the settlement provisions in the Poor Law Act, 1930, to patients admitted to a hospital maintained by the council of a county or county borough under the P.H.A. such as a hospital which has been appropriated under the L.G.A., 1929 (b). [309]

The Minister has decided (c) that the law of settlement was not applicable to a patient who was admitted to an appropriated hospital by the medical superintendent of the hospital, if in so admitting the patient he was not acting in a poor law capacity; it was considered in such circumstances that the patient could not be deemed to be in receipt of relief under the Poor Law Act, 1930 (d). A patient was further deemed to be in receipt of relief if he was admitted to the hospital by an order signed by an assistant relieving officer of the council and presented on behalf of the patient upon his admission into the hospital (e). Also where a person was admitted as a public assistance case on an order signed by the medical superintendent, in his capacity as assistant relieving officer, the person was in receipt of relief and was, therefore, amenable to the settlement provisions of the Poor Law Act, 1930 (f).

From the various decisions of the Minister it would appear that the mere classification of a patient as a poor law case after admission to the hospital for treatment does not enable the settlement provisions in the Poor Law Act, 1930, to be applied unless a definite order was given for the admission of the patient as a poor law case. If, however, the admission order is signed by the medical superintendent or steward acting as an assistant relieving officer in a poor law capacity, there is chargeability within the meaning of the Poor Law Act, 1930 (g). [310]

Removal Orders (h). *Persons to be Removed.*—An order of removal may be made in respect of any person who is in receipt of relief unless rendered irremovable by any of the provisions of the Poor Law Act, 1930. The removal would be to the county or county borough in which the person is last legally settled (i). [311]

The Order.—Application must be made by an authorised officer

(u) *R. v. Hemlington (Inhabitants)* (1777), Cald. Mag. Cas. 6; 37 Digest 236, 291; *Shermanbury v. Bolney* (1694), Carth. 279; *Wangford Parish v. Brandon Parish* (1698), Carth. 449; 37 Digest 328, 1301. See also *R. v. Bucklebury (Inhabitants)* (1786), 1 Term Rep. 164; 37 Digest 329, 1318; *R. v. Aughton (Inhabitants)* (1861), 4 L. T. 244; 37 Digest 320, 1188.

(a) S. 93 (7); 12 Halsbury's Statutes 1017.

(b) SS. 1, 118; 10 Halsbury's Statutes 883, 953.

(c) See "Reference to Minister of Health," post, p. 160.

(d) *L.C.C. and Portsmouth City Council* (1933). See note (c), *supra*.

(e) *L.C.C. and Reading Borough Council* (1933). See note (c), *supra*.

(f) *Birmingham County Borough and Bournemouth County Borough*. See note (c), *supra*.

(g) *West Bromwich County Borough and Middlesbrough County Borough* (1935). See note (c), *supra*.

(h) For the case law, see 37 Digest, pp. 323—358.

(i) S. 94; 12 Halsbury's Statutes 1020.

of the council to two justices of the peace having jurisdiction in any part of the county or county borough. The officer applying for the order should be authorised, either generally or in respect of the particular application, to appear on behalf of the council (*k*) and need not be a practising solicitor. In some areas the application is made by the clerk to the council, or one of his assistants, but it is more usual for the application to be made by the public assistance officer or a member of his staff. In many areas an officer in the public assistance department known as the settlement officer is authorised to make these applications. It is not necessary that the complaint should be made upon oath (*l*). Application in open court is not required, although it appears to be the more usual practice for the complaint to be made to petty sessions.

A removal order may not be made upon the evidence of the person to be removed without such corroboration as the justices think fit (*m*). The justices usually accept the evidence of the officer applying for the order as to the inquiries which he has made. There must be evidence that the person has become chargeable to the county or county borough. This evidence is best given by a certificate of chargeability signed by the clerk or other officer of the council authorised for the purpose in the form prescribed by the Public Assistance (Certificate of Chargeability) Order, 1930 (*n*). The public assistance officer may be so authorised (*o*). Such a certificate purporting to be signed by the clerk of the council, shall, unless the contrary be shewn, be sufficient evidence of the truth of all the statements contained therein and shall within the period of twenty-one days from the date thereof, be received as evidence without proof of the signature or the official character of the person signing it (*p*). If a certificate of chargeability is not produced the justices may accept whatever evidence they deem proper to prove that the person is chargeable.

The justices must be satisfied of the truth of the complaint and that the person is not settled within or irremovable from the county or county borough by whom the removal is sought to be effected (*q*). An order of removal is conclusive in regard to the facts cited therein (*r*). Two persons cannot be removed by one order, although to the same county or county borough, if their settlements are independent of each other (*s*). The order of removal must state that complaint was made to the justices (*t*), but such complaint need not be in writing, although this is desirable (*u*). [312]

Notice of Chargeability (*a*).—No person may be removed under a removal order until twenty-one days have elapsed after written notice of his being chargeable, accompanied by a copy of the order and by a

(*k*) L.G.A., 1933, s. 277; 26 Halsbury's Statutes 452.

(*l*) *R. v. Standish with Langtree (Inhabitants)* (1740), Burr S. C. 150; 37 Digest 326, 1271.

(*m*) S. 95 (b); 12 Halsbury's Statutes 1020.

(*n*) S.R. & O., 1930, No. 311.

(*o*) *Glamorgan v. Merthyr Tydfil* (1932). See "Reference to Minister of Health," *post*, p. 160.

(*p*) S. 158; 12 Halsbury's Statutes 1045.

(*q*) S. 95; *ibid.*, 1020.

(*r*) *R. v. Leeds (Inhabitants)* (1857), 5 W. R. 499; 37 Digest 324, 1230.

(*s*) *R. v. Tutton and Crompton Martin, Somersetshire Parish* (1721), 11 Mod. Rep. 356; 37 Digest 326, 1262; *Chewton Parish v. Compton Martin Parish* (1721), 1 Stra. 471; 37 Digest 326, 1261.

(*t*) *R. v. Hareby (Inhabitants)* (1738), Andr. 361; 37 Digest 326, 1268.

(*u*) *R. v. Bedingham (Inhabitants)* (1844), 5 Q. B. 653; 37 Digest 327, 1295.

(*a*) For the case law, see 37 Digest, p. 337.

written statement setting forth the grounds of the removal, including particulars of the settlement relied upon in support thereof, has been served by the removing council upon the council against whom the order is made (b).

Every notice, statement, demand or other document required to be given by the council of any county or county borough in respect of any removal order or any appeal against a removal order may be signed by the clerk to their council in their name, and shall be deemed to be duly served upon the council of the county or county borough to whom it is addressed, if it is delivered to the clerk of the council, or left at his office, or sent by post addressed to him at his office (c). [318]

Depositions (d).—The clerk to the justices making the removal order must keep the depositions upon which the order was made and shall, within seven days, on application furnish a copy thereof to the council against whom the order was made (e). If an application is made to the clerk to the justices for a copy of the depositions within the period of twenty-one days, no person named in the order may be removed until the expiration of fourteen days after the sending of the copy of depositions (f).

A notice of chargeability should name the persons to be removed, and where it merely stated that "the persons named in the order hereunto annexed" have become chargeable, etc., and a counterpart of the order was written on the back of the same paper, it was held insufficient (g).

Where, however, a notice of chargeability stated that A. was chargeable and the order of removal was for the removal of A. and her daughter, who, at the hearing of the appeal, was proved to be of the age of five months only, the court held that as the child could not be separated from the mother, it was immaterial whether it was mentioned in the notice of chargeability or not (h). In this case it was also held that the words "has become chargeable" in a notice of chargeability are equivalent to "is chargeable."

If notice of appeal against a removal order is received by the removing council within the period of twenty-one days of the notice of chargeability, or if a copy of the depositions is applied for within that period, before the expiration of fourteen days of the sending of the copy depositions, no person named in the order shall be removed until the appeal has been finally disposed of or the time for prosecuting the appeal has expired (i). The periods of twenty-one days and fourteen days are distinct and may be in part concurrent. Thus, if the depositions are applied for and sent within fourteen days after the receipt of notice of chargeability, a person could be removed within the further period of fourteen days unless notice of appeal is given, making a total period of twenty-eight days from the delivery of the original notice of chargeability. In practice it is often found that the council on whom the order is made are unable to complete their inquiries within the first period

(b) S. 96 (1); 12 Halsbury's Statutes 1021. But see note (m), *post*, p. 158.

(c) S. 107; *ibid.*, 1027. See *Glamorgan v. Merthyr Tydfil* (1932). See "Reference to Minister of Health," *post*, p. 160.

(d) For the case law, see 37 Digest, p. 337.

(e) S. 96 (2); 12 Halsbury's Statutes 1021.

(f) But see note (i), *infra*.

(g) *R. v. Gomersal (Inhabitants)* (1848), 12 Q. B. 76; 37 Digest 337, 1410.

(h) *R. v. Stockton (Inhabitants)* (1845), 7 Q. B. 520; 37 Digest 337, 1409.

(i) Ss. 96 (3), 97; 12 Halsbury's Statutes 1021; Summary Jurisdiction (Appeals) Act, 1933, s. 9; 26 Halsbury's Statutes 555.

of twenty-one days and depositions are applied for as a matter of formality to enable the council to have another fourteen days in which to complete the inquiries. If the inquiries are not then complete it is not unusual for a notice of appeal to be given and endorsed "For time" in order to allow a further period in which the inquiries can be concluded, and in such an instance it is customary for a letter to be sent with the notice of appeal asking the council by whom the order is obtained not to incur expense in preparing its defence to the appeal pending further inquiries being made. Such a letter is informal, but in practice it is the usual method of prolonging the time during which inquiries can be made in a particular difficult case (k). [314]

The Removal (l).—If a council against whom a removal order is made consent in writing to submit to the order and receive any person named therein, that person may be removed forthwith (m). The removal must be effected by the council of the county or county borough on whose complaint it was made. An officer of that council should remove the person to an institution belonging to the county or county borough to which he is ordered to be removed (n). Where the removal is to be effected to a county or county borough having more than one institution, it is customary to inquire as to the institution to which the person should be removed, but although, as a matter of convenience, such an inquiry is often made, this is not obligatory, and it is a matter for the council to whom the person is made chargeable to inform the removing council of the institution to which it is desired the person should be removed.

The council may employ any proper person to effect the removal and the delivery of the person named in the order to any officer of the institution, shall be deemed a delivery to the council. If any such officer refuses to receive any person so delivered in accordance with the terms of a removal order he is liable on summary conviction to a fine not exceeding five pounds (p). The court would not grant a *mandamus* requiring an officer of the council to receive a person under an order of removal. The proper course is by indictment (q). The expenses of such removal are payable by the council effecting the removal (r). [315]

Suspension of Removal Order (s).—If it appears to the justices making a removal order that any person named therein is unable to travel by reason of sickness or other infirmity, or that it would be dangerous for him to do so, they shall by an endorsement on the order, signed by them, suspend the execution of the order until satisfied that it may safely be executed without danger to that person. Such a suspension operates also as a suspension of the removal for the same period of every other person named therein who was of the same household or family as the sick or infirm person at the time of the making of the order (t). A copy of the suspended order must be served within ten days from its

(k) As to computation of time, see Stone's *Justices' Manual*.

(l) For the case law, see 37 Digest, pp. 338—340.

(m) S. 96 (4); 12 Halsbury's Statutes 1021.

(n) S. 98 (1); *ibid.*, 1022.

(p) S. 98.

(q) *Ex parte, Downton Overseers* (1858), 8 E. & B. 856; 27 L. J. (M. C.) 281; 37 Digest 388, 1416.

(r) S. 113; 12 Halsbury's Statutes 1029.

(s) For the case law, see 37 Digest, pp. 329—332.

(t) S. 99; 12 Halsbury's Statutes 1023.

date (*u*). The justices who made the order, or any two justices having the same jurisdiction, may by endorsement signed by them authorise the execution of the order (*a*).

The suspension of an order can only be made by the justices at the same time as the order of removal itself; the justices being after that time, *functi officio* (*b*). Where the person was not sick when the order of removal was made, so that it was not suspended at the time of the making of the order, and it cannot be executed at the expiration of the twenty-one days by reason of sickness occurring subsequently, the justices may make a fresh order of removal and suspend that order without any formal *supersedeas* or notice of abandonment of the previous order (*c*). Where the execution of an order is suspended on the grounds of the illness of the husband, the wife and child named in the order may be removed after his death without any subsequent order (*d*). No act done by any person continuing to reside in a county or county borough under the suspension of a removal order shall be of any effect for the purpose of giving him a settlement therein, or a status of irremovability therefrom (*e*).

Where a removal order has been suspended on account of sickness, the council obtaining the order may at the end of every quarter send to the council against whom the order is made an account of the cost incurred in the relief of any person named in the order and may recover the amount reasonably expended by them in the county court. If the removal order is subsequently executed, or the person named in the order dies before the execution thereof, the justices who made an order or any two justices having the same jurisdiction may order the expenses proved to have been incurred by the suspension of the order, or so much thereof as may remain unpaid, to be paid by the council against whom the removal order was made. If the sum ordered to be paid by the council exceeds twenty pounds, the council may appeal against the order to the next court of quarter sessions (*f*). Proceedings for the recovery of costs must be commenced within six months of their becoming payable (*g*). An application to the justices for an order for the payment of the cost of maintenance must be made upon summons and not *ex parte* (*h*). [316]

Abandonment of Removal Order (*i*).—The council obtaining an order may at any time abandon it by written notice served upon the council against whom the order was made, and thereupon the order and all proceedings consequent thereon shall become null and void. The council abandoning an order shall pay to the council against whom the order was made the costs which the latter council may have incurred by reason of the order and of all subsequent proceedings thereon, and such costs may be taxed by the proper officer of the court before whom any

(*u*) S. 99 (5); 12 Halsbury's Statutes 1023.

(*a*) S. 99 (7); *ibid.*

(*b*) *R. v. Llanllechid (Inhabitants)* (1860), 2 E. & E. 530; 37 Digest 329, 1328.

(*c*) *Atcham Union v. Birmingham Union* (1878), 56 J. P. 297, D. C.; 37 Digest 330, 1329.

(*d*) *R. v. Englefield (Inhabitans)* (1811), 13 East, 317; 37 Digest 332, 1347.

(*e*) S. 99 (3); 12 Halsbury's Statutes 1023.

(*f*) S. 99 (6); *ibid.*

(*g*) *Hill v. Thorncroft* (1860), 3 E. & E. 257; 37 Digest 331, 1341.

(*h*) *R. v. Wilkinson*, [1891] 1 Q. B. 722; *sub nom. R. v. West Riding of Yorkshire J.J.*, 60 L. J. (M. C.) 122; 37 Digest 331, 1344.

(*i*) For the case law, see 37 Digest, pp. 332—333.

appeal against the order, if it had not been abandoned, might have been brought, and shall be recoverable summarily as a civil debt (k). [317]

Prohibition of Return after Removal under Order.—If any person removed under a removal order returns to and again becomes chargeable to the county or county borough from which he was removed, within twelve months after his removal and without the consent of the council of that county or county borough, he shall be deemed an idle and disorderly person within the meaning of sect. 3 of the Vagrancy Act, 1824 (l).

On the prosecution of any such person the onus is upon him to show that he had a sufficient excuse for returning, and that he did not return in a state of pauperism (m). [318]

Unlawful Removals.—Any officer who is concerned with the relief of the poor is liable, on summary conviction, to a fine not exceeding five pounds, if, with intent to cause any person to become chargeable to any county or county borough to which that person was not then chargeable, he conveys that person out of the county or county borough, within which he acts, or causes or procures any such person to be so removed; or gives directly or indirectly any money, relief or assistance, or affords or procures to be afforded any facility for such conveyance; or makes any offer or uses any threat to induce any such person to depart from a county or county borough (n).

Proceedings may be taken before a court of summary jurisdiction having jurisdiction within the county or county borough either from which or to which the person was conveyed or departed. [319]

Criminal Lunatics.—When a person ceases to be a criminal lunatic and becomes a rate-aided person of unsound mind an order may be made for his removal to a mental hospital of the county or county borough to which he is *prima facie* chargeable (o).

The governor of the prison should give notice to the council of the county or county borough to which it is desired to make the person chargeable. It is customary for the council to cause inquiries to be made as to the patient's settlement, and, if the last legal settlement is not in that county or county borough but is shewn to be in another area, on information being given to the governor of the prison it is usual for the patient to be transferred direct to a mental hospital of the county or county borough in which the patient is found to be last legally settled in order to obviate further transfer. [320]

Settlement and Removal of Mental Patients.—The provisions in the Poor Law Act, 1930, as to the law of settlement and removal apply to a mental patient maintained in a mental hospital as to a poor person maintained in an institution or receiving out-door relief. The procedure for obtaining an order of removal does not, however, apply, and in the case of a mental patient in a mental hospital the person is not removed under the order but chargeability is transferred to the county or county borough in which the person is settled under an order of adjudication to be made by two justices (p). See title LUNACY.

When an order of removal is obtained in respect of a person who is

(k) S. 100; 12 Halsbury's Statutes 1024.

(l) S. 101; *ibid.*, 913, 1024.

(m) *Mann v. Davers* (1819), 3 B. & Ald. 103; 37 Digest 362, 1636.

(n) *Shee v. Dannatt* (1862), 26 J. P. 359; 37 Digest 213, 98.

(o) Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 64), s. 8; 13 Halsbury's Statutes

of sound mind, the cost of maintenance is not recoverable from the county or county borough of settlement until the sending of the notice of chargeability, but in the case of a mental patient the order of adjudication may provide for repayment of the expenses incurred during the previous twelve months, together with the expenses of the patient's examination and removal. The order may also provide for the payment of the future cost of maintenance.

A mental patient who is an inmate of a workhouse must be dealt with under an order of removal made under the Poor Law Act, 1930, and not under an order of adjudication made under the Lunacy Act, 1890. An order of removal can only be obtained on the grounds of the person's being settled in some other county or county borough. Under an order of adjudication the chargeability of a mental patient may be transferred to the county or county borough from which the patient is irremovable or in which he is settled (*q*).

A council may accept chargeability of a mental patient without an order of adjudication (*r*).

The provisions in the Poor Law Act, 1930, and the Lunacy Act, 1890, in reference to the settlement of mental patients are applicable to voluntary patients and temporary patients received into an institution under the Mental Treatment Act, 1930 (*s*).

In the case of a temporary patient, the justices making an order of adjudication may order that the future cost of the maintenance of a person shall be paid by the county or county borough in which the patient is settled or from which the patient is irremovable (*t*).

An order of adjudication in respect of a voluntary patient does not enable the cost of future maintenance to be recovered. In the case of a voluntary patient, therefore, it is only possible under an order of adjudication to recover the cost of maintenance up to the date of the order and a further order must be obtained subsequently to cover the further cost.

In considering the application of settlement and removal as contained in the Poor Law Act, 1930, it must be taken into account that the person shall not be deemed to be in receipt of poor relief or be deprived of any right or privilege by reason only that he or a member of his family is maintained as a rate-aided patient of unsound mind, but this does not affect any provision of the Lunacy Act, 1890, or the Poor Law Act, 1930, relating to settlement or chargeability of a patient (*u*). The settlement or chargeability of a poor person must therefore be determined as it would have been before the Mental Treatment Act, 1930, was passed (*a*). [321]

Appeals (*b*).—If the council of a county or county borough, against whom an order of removal is made, are aggrieved by the order, they may appeal to the next practicable court of quarter sessions having jurisdiction in the county or place for which the justices who made the order act. Appeals to quarter sessions are heard, except in the county

(*q*) Lunacy Act, 1890, s. 294; 11 Halsbury's Statutes 116.

(*r*) *Ibid.*, 17, and Mental Treatment Rules, 1930, r. 23; 23 Halsbury's Statutes 183.

(*s*) Mental Treatment Rules, 1930, rr. 17—23; 23 Halsbury's Statutes 182, 183.

(*t*) *Ibid.*, r. 19; *ibid.*, 183.

(*u*) Mental Treatment Act, 1930, s. 18; 23 Halsbury's Statutes 170.

(*a*) *Rochdale Corp. v. Lancashire County Council*, [1937] 1 K. B. 632; [1937]

1 All E. R. 559; Digest Supp.

(*b*) For the case law, see 37 Digest, pp. 340—358.

of London, by a committee of the quarter sessions, called the appeal committee. The next practicable sessions for trying an appeal against a suspended order of removal are not invariably the next sessions after the service of the order, but the next sessions after the time when the service of the notice of appeal became practicable (c). Justices are bound *ex parte* to enter and respite an appeal against an order of removal at the quarter sessions next after the service of the order, although more than thirty-five days may have elapsed, and a notice of appeal given in time for the next sessions after such entry and respite is sufficient, and the appeal ought then to be heard (d). It is for the justices at quarter sessions to decide on the facts, in the first instance, whether an appeal against an order of removal has or has not been brought at the next practicable sessions after notice of the order has been received by appellants; and mere proof that there has been some delay on the part of appellants in taking the necessary action does not preclude the justices from exercising their discretion in the matter, nor compel them to dismiss the appeal (e). When a session has intervened between the date and the service of an order of removal, the appellants have a right to enter their appeal at the next sessions, without being called upon to prove the time when the order was served. The fact being within the knowledge of both parties, it is for the respondents to prove it, if they desire to show that appellants are out of time (f).

The person named in the order to be removed has also the right of appeal but in practice very few instances are known of the exercise of such a right (g). [322]

No appeal against a removal order shall be allowed unless notice of appeal is given within twenty-one days (h) after notice of chargeability and a statement of the grounds of the removal have been sent to the council to whose area it is sought to remove the person, or if, within those twenty-one days, a copy of depositions has been applied for within fourteen days after sending the copy thereof. If it appears to the court of quarter sessions that the notice of appeal, though given within the specified time, was not given to the respondent at a reasonable time before the hearing of the appeal, the court shall adjourn the appeal until the next session. The appellant shall, with the notice of appeal, or fourteen days at least before the first day of the sessions at which the appeal is to be tried, serve upon the respondent a written statement of the grounds of appeal, and shall not be heard in support of the appeal unless such a statement has been so served (i). [323]

On the hearing of an appeal against a removal order it shall not be lawful for the respondent or appellant to go into or give evidence of any other grounds of removal or of appeal respectively than those set out in the order or in the statements of grounds of removal and grounds of appeal respectively (j). Where an order of removal has been served but without notice of chargeability, the county or county borough

(c) *R. v. West Riding of Yorkshire JJ.* (1842), 6 J. P. 428; 37 Digest 342, 1462.

(d) *R. v. London JJ.* (1846), 9 Q. B. 41; 37 Digest 342, 1463.

(e) *R. v. Derbyshire JJ.* (1871), 25 L. J. 161; 37 Digest 342, 1466.

(f) *R. v. North Riding of Yorkshire JJ.* (1828), 6 L. J. (o. s.) M. C. 55; 37 Digest 344, 1475.

(g) *R. v. Hartfield (Inhabitants)* (1692), Carth. 222; 37 Digest 340, 1434.

(h) Cf. Summary Jurisdiction Act, 1848, s. 35; 11 Halsbury's Statutes 290; Summary Jurisdiction Act, 1879, s. 31.

(i) S. 97; 12 Halsbury's Statutes 1021.

(j) Cf. *R. v. Llangenny (Inhabitants)* (1863), 4 B. & S. 311; 37 Digest 352, 1556; *R. v. West Bromwich (Inhabitants)* (1863), 27 J. P. 726; 37 Digest 352, 1557.

against whom the order is made may take advantage of such omission as a ground of appeal against the order (*k*). The quarter sessions has no jurisdiction to hear an appeal where notice of chargeability has not been served (*l*). It is a good ground of appeal that the examination from which it was made, though it sets forth facts which show a settlement, does not disclose any legal evidence of such facts (*m*). [324]

If the justices at quarter sessions refuse to allow the appeal to be entered, or if they refuse to try it, the divisional court should be moved for a *mandamus* (*n*). A party that successfully raises an ill-founded objection at quarter sessions and substantially litigates the point up to the time of cause being shewn against a rule, which has been obtained for *mandamus* to the sessions to hear the appeal, may have to pay the costs of the rule, even although it does not actually shew cause against him (*o*). If the appellants have time to serve their notice of grounds of appeal after the prescribed period of twenty-one and fourteen days, they must enter and try their appeal at the next sessions, but if they have not time they must enter and respite their appeal at the next sessions and try it at the next following sessions (*p*). If the sessions consider that the appellants, although they have not exceeded the twenty-one days and fourteen days respectively, have yet taken more time than was needed to inquire into the settlement and to supply the evidence required for their own grounds of appeal; and have consequently not delivered their grounds of appeal within fourteen days before the first day of the next sessions after the order of removal was served, they may refuse to respite and their decision on that point is final (*q*). [325]

The facts on which the appellant relies as constituting an alternative settlement must be stated with sufficient certainty to enable the respondent to inquire into the statement and, if necessary, to proceed to trial. The notice of appeal may be served before the grounds of appeal or the grounds of appeal may be served before the notice of appeal (*r*), although in practice the two documents are frequently incorporated in one document.

Where grounds of appeal are regularly served before the sessions at which it is intended to try the appeal, and the appeal is adjourned to the next sessions, fresh grounds of appeal may be served fourteen clear days before such adjourned session (*s*). This may be done even if the case had been called on, and the respondent council had begun to state its case (*t*), but may not be allowed if the case had been heard and adjourned on account of the justices being equally divided (*u*).

The court of quarter sessions has still power to decide upon the validity, as well as the merits, of the grounds of appeal (*a*), which may be classified under four headings: (1) the acquisition of a subsequent

(*k*) *R. v. Brixham (Inhabitants)* (1888), 8 Ad. & El. 375; 37 Digest 348, 1523.

(*l*) *R. v. Shrewsbury Recorder* (1853), 1 E. & B. 711; 37 Digest 348, 1524.

(*m*) *R. v. Ecclesall Bierlow (Inhabitants)* (1841), 11 Ad. & El. 607; 37 Digest 348, 1525.

(*n*) *R. v. Richmond Recorder* (1858), 27 L. J. (M. C.) 197; 37 Digest 337, 1411.

(*o*) *R. v. Birmingham* (1875), 44 L. J. (M. C.) 48.

(*p*) *R. v. West Riding of Yorkshire JJ.* (1858), 27 L. J. (M. C.) 269; 37 Digest 348, 1468; *R. v. Skircoat (Inhabitants)* (1859), 28 L. J. (M. C.) 224; 37 Digest 348, 1469.

(*q*) *R. v. Sussex JJ.* (1865), 34 L. J. (M. C.) 69; 37 Digest 348, 1474.

(*r*) *R. v. Suffolk JJ.* (1835), 4 Ad. & El. 319; 37 Digest 346, 1501.

(*s*) *R. v. Derbyshire JJ.* (1888), 6 Ad. & El. 612, n.; 37 Digest 346, 1500.

(*t*) *R. v. Kendal (Inhabitants)* (1859), 28 L. J. (M. C.) 110; 37 Digest 352, 1555.

(*u*) *R. v. Arlecdon (Inhabitants)* (1839), 9 L. J. (M. C.) 9; 37 Digest 352, 1554.

(*a*) *R. v. Kesteven JJ.* (1844), 13 L. J. (M. C.) 78; 37 Digest 347, 1517.

settlement ; (2) that the person is irremovable ; (3) general objections to the respondents' proceedings ; and (4) denials, to the respondent's statements. [326]

If the ground of appeal is that notice of chargeability, accompanied by a copy of the order, has not been sent, the appellants cannot object that the copy of the order sent is incorrect, in omitting the name of one of the persons to be removed (b). If the defect is one of substance and is stated on the face of the order, a general statement that the order is bad and defective on the face of it is sufficient ; as, for example, where the place of residence or period of hiring (c) of an apprentice is omitted in a settlement by apprenticeship (d), or where it is a settlement by renting, the amount or rent, or if the grounds of removal contain no statement of chargeability (e). If the appellants do not rely merely on general grounds but special grounds, they cannot at a hearing object to any other defects than those stated in the special grounds (f). They may object in their grounds of appeal to a copy of the order if it is not sent with a notice of chargeability (g). No objection can be made on the grounds of any delay or omission in sending a copy of depositions or that they do not contain sufficient evidence, or that anything stated in or omitted from them may be an objection to the order, or grounds of removal (h). Any matter in the order, or grounds of removal, which is not denied is deemed to be admitted. A general denial of the allegations in the order compels the respondent to prove all matters essential to establish the settlement (i).

If it is alleged in the grounds of appeal that the statements contained in the depositions are not true, this is deemed sufficient to compel the respondent to prove the settlement (k). General denial is not sufficient where the grounds of settlement appear in a former order which has not been appealed against and has been acted upon (l). Where there are two settlements set up and one is specifically denied, a general denial will not be considered as disputing the other (m). The appellants are not restricted to one ground of appeal. [327]

Arbitration under Baines' Act (n).—At any time after notice of appeal has been given to any court of quarter sessions against a removal order, the parties may, by consent and on obtaining a judge's order, refer the appeal to one or more arbitrator or arbitrators, whose award shall be

(b) *R. v. St. Anne's, Westminster (Inhabitants)* (1847), 16 L. J. (M. C.) 33 ; 37 Digest 260, 540.

(c) *R. v. Middleton, Teesdale (Inhabitants)* (1840), 10 Ad. & El. 688 ; 37 Digest 355, 1579.

(d) *R. v. Flockton (Inhabitants)* (1843), 2 Q. B. 535 ; 12 L. J. (M. C.) 70 ; 37 Digest 355, 1580.

(e) *R. v. Black Callerton (Inhabitants)* (1839), 10 Ad. & El. 679 ; 37 Digest 336, 1404.

(f) *R. v. Staple Fitzpaine (Inhabitants)* (1842), 2 Q. B. 488 ; 37 Digest 354, 1574.

(g) *R. v. St. Anne's, Westminster (Inhabitants)*, *supra*.

(h) *R. v. St. John's, Margate (Inhabitants)* (1841), 1 Q. B. 252 ; 37 Digest 349, 1534.

(i) *R. v. St. Giles, Colchester (Inhabitants)* (1848), 17 L. J. (M. C.) 148 ; 37 Digest 351, 1548 ; *R. v. Aston nigh Birmingham (Inhabitants)* (1849), 19 L. J. (M. C.) 17 ; 37 Digest 351, 1549.

(k) *R. v. St. Pancras (Inhabitants)* (1849), 19 L. J. (M. C.) 28 ; 18 Jur. 1077 ; 37 Digest 351, 1551.

(l) *R. v. St. Mary, Bungay (Inhabitants)* (1849), 19 L. J. (M. C.) 39 ; 37 Digest 327, 1286.

(m) *R. v. Widecombe in the Moor (Inhabitants)* (1847), 16 L. J. (M. C.) 44 ; 37 Digest 355, 1577.

(n) Quarter Sessions Act, 1849 ; 11 Halsbury's Statutes 298.

as effectual as a judgment of sessions, and may upon the application of either party be enrolled among the records of sessions. The order will be obtained on summons from a judge in the King's Bench Division in chambers; it must refer to the written submission, and this should provide carefully for the power over costs intended to be exercised by the arbitrator. The arbitrator may state a special case upon any point of law for the decision of the High Court (o). [328]

Special Case under Baines' Act.—At any time after notice of appeal to quarter sessions against a removal order, the parties may, by consent and by order of a judge of the High Court, state the facts in the form of a special case for the opinion of the High Court, and may agree that judgment in conformity with the decision, and for any costs awarded, shall be entered upon motion at the next sessions or the next sessions but one. The judgment will then have the same effect as if it had been the judgment of sessions upon the trial of the appeal (p). The requisite order will be obtained on summons from a judge of the King's Bench Division in chambers, and the special case with the order attached must then be filed at the Crown office and entered for hearing in the Crown paper. One counsel will be heard on each side, the appellant opening and replying (q). An appeal lies to the Court of Appeal, and the successful party in the Divisional Court cannot prevent such appeal by hastily entering judgment at sessions before the appeal can be heard (r). [329]

Reference to Minister of Health.—In order to avoid litigation it is sometimes considered desirable by the councils concerned to refer the matter to arbitration by an agreed arbitrator, and to agree to abide by the decision of the arbitrator. A better course is to refer the matter to the Minister of Health under sect. 161 (s).

Two or more county or county borough councils between whom any question affecting the settlement, removal or chargeability of any person arises, may by agreement under their common seal submit the question to the Minister for his decision and the Minister may, if he sees fit, by order determine the question and every such order shall in all courts and for all purposes be final and conclusive, between the councils by whom the question was submitted. It will be noticed that the decision of the Minister is only binding between the parties by whom the question was submitted and not upon other councils who may be subsequently interested in the same question. [330]

Scotland, Northern Ireland, Isle of Man, Scilly Isles and the Channel Isles (t).—The Poor Law Act, 1930 (u), does not affect the enactments (v) relating to the removal of poor persons from or to England and Wales to or from Scotland, Northern Ireland, the Isle of Man, the Scilly Isles or the Channel Isles.

If any person born in Scotland or Northern Ireland, or in the Isle of Man or Scilly, Jersey or Guernsey, is not settled in England and

(o) Quarter Sessions Act, 1849, s. 12; 11 Halsbury's Statutes 296.

(p) *Ibid.*, s. 11; *ibid.*

(q) *Ormskirk Union v. Chorlton Union*, [1903] 1 K. B. 19.

(r) *Lodge v. Huddersfield Corp.*, [1898] 1 Q. B. 859; 33 Digest 458, 1710.

(s) 12 Halsbury's Statutes 1046.

(t) For the case law, see 37 Digest, pp. 338–340.

(u) S. 109; 12 Halsbury's Statutes 1028.

(v) Poor Removal Acts, 1845, 1847, 1861, 1862, 1863, 1900; 12 Halsbury's Statutes 926, 929, 938, 940, 943, 956; Poor Law (Scotland) Acts, 1845 (8 & 9 Vict. c. 83), 1898 (61 & 62 Vict. c. 21); Irish Free State (Consequential Adaptation of Enactments) Order, 1923 (S.R. & O., 1923, No. 405).

becomes chargeable by reason of relief given to himself or herself or to his wife, or to any legitimate or illegitimate child, such person, his wife and child so chargeable, may be removed respectively to Scotland, Northern Ireland, Isle of Man, Scilly, Jersey or Guernsey (a).

A wife and children cannot be removed to Ireland without the husband who is the head of the family even although the woman was herself born in Ireland (b).

An appeal will not lie against removal to Northern Ireland of an Irish born person unless it be proved, either that the person was settled in, or irremovable from, the county or county borough in which he is chargeable or that the person was not liable to be removed to Ireland. Therefore an appeal cannot proceed where a poor person has been ordered to be removed to a particular place in Ireland if the person was in fact liable to be removed to Ireland although to a different poor law area (c).

A relieving officer is empowered to take before two justices, without summons or warrant, any poor person who becomes chargeable and whom he may have reason to believe is liable to be removed from England under the Poor Removal Act, 1845 (d).

An application for a warrant for removal from any place in England to Ireland or Scotland, can only be heard by two or more justices in petty sessions or by a stipendiary magistrate or a metropolitan police magistrate and must be made by a duly authorised officer.

When an order of removal is made under the Poor Law Act, 1930, in respect of the removal of a person from one county or county borough to another county or county borough, it is not essential that the poor person should be seen by the justices, but this is essential in the case of removal to Scotland, Northern Ireland or one of the other places mentioned in the statute.

The justices must be satisfied that every person who is proposed to be removed is in such a fit state of health as not to be liable to suffer bodily or mental injury by the removal (e). They must also be satisfied that the person is neither settled in nor irremovable from the county or county borough in which he has become chargeable and that he is otherwise liable to be removed.

The warrant of removal must contain the name and reputed age of every person ordered to be removed and the name of the place in Scotland or Ireland where the justices find such person has been born, or has last resided for a term of five years in the case of a person to be removed to Scotland, and three years in the case of a person to be removed to Ireland (f).

An order is obtained *ex parte* and no preliminary notice is necessary to the poor law authority to which the person is sought to be made chargeable. The removal may be effected at any time after the expiration of twenty-four hours from the time of posting or serving the document.

(a) Poor Removal Act, 1845, s. 2; 12 Halsbury's Statutes 926.

(b) *Poor Law Commissioners of Ireland v. Liverpool Vestry* (1869), L. R. 5 Q. B. 79; 37 Digest 389, 1430.

(c) *Local Government Board of Ireland v. Blackburn Union*, [1909] 1 K. B. 454; 37 Digest 389, 1431.

(d) Poor Removal Act, 1847, s. 1; 12 Halsbury's Statutes 929.

(e) Poor Removal (No. 2) Act, 1861; *ibid.*, 938; Poor Removal Act, 1862, s. 1; *ibid.*, 940.

(f) Poor Removal Act, 1862, s. 2; *ibid.*, 940.

An officer removing a person under a warrant is liable to imprisonment for three months or a fine not exceeding twenty pounds if he wilfully deserts the person (g).

If it is not possible to ascertain the patient's birth a person may be removed to any port or union or parish in either country which, in the view of the justices, is the most expedient (h).

In the case of any native of Northern Ireland who has been absent from Northern Ireland for less than twelve months, the poor person may, if the council applying for the warrant and the justices think fit, be removed to any place other than the place of birth or continued residence, with his consent (i).

If the removal is to Northern Ireland the council obtaining the warrant must send a copy of it by post to the clerk of the poor authority in Ireland to which such poor person is ordered to be removed, and also a copy of the depositions taken in the case at any time within three months from the date of the warrant required by that authority (k).

The poor law authority in Northern Ireland may agree with the county or county borough in England to which a person is chargeable to be responsible for the cost of his relief in order to avoid his removal under a warrant. A person who has resided continuously for five years in England is not thereafter removable to Ireland (l). [331]

Removal to England.—There is no statutory provision enabling a person to be removed from Ireland to Scotland or England. Generally the law is reciprocal and any person who becomes chargeable in Northern Ireland, Scotland or the Channel Islands may be removed to the place of his birth in England or Wales. If in such a case the person is found to be settled in some other county or county borough, an order of removal may be obtained under the Poor Law Act, 1930, for his transfer thereto.

The wife of a man born in Scotland may be removed with him to Scotland but cannot be removed to the place of her maiden settlement in England, and neither his wife nor the child may be removed without him (m).

The children born in England of a man born in Northern Ireland or Scotland, although removable with the father while they are unemancipated, cannot be removed when they become emancipated (n).

Any poor person born in England, Ireland or the Isle of Man not having acquired a settlement in any parish or combination in Scotland, who becomes chargeable, may be removed to England or Northern Ireland or the Isle of Man (o). There is no power to remove to England a person becoming chargeable in Scotland unless that person was

(g) Poor Removal Act, 1863, s. 4; 12 Halsbury's Statutes 943.

(h) L.G. (Scotland) Act, 1894 (57 & 58 Vict. c. 58), ss. 21, 22; Poor Law (Scotland) Act, 1898 (61 & 62 Vict. c. 21), s. 1; L.G. (Scotland) Act, 1929 (19 & 20 Geo. 5, c. 25), s. 1; Poor Removal (No. 2) Act, 1861, s. 2; 12 Halsbury's Statutes 938; Poor Removal Act, 1862, s. 2; 12 Halsbury's Statutes 940.

(i) Poor Removal (No. 2) Act, 1861; 12 Halsbury's Statutes 938.

(k) *Ibid.*, s. 3; *ibid.*, 939.

(l) Poor Removal Act, 1900; *ibid.*, 956.

(m) *R. v. Leeds (Inhabitants)* (1821), 4 B. & Ald. 498; 37 Digest 339, 1428; *R. v. Cottingham (Inhabitants)* (1827), 6 L. J. (o. s.) M. C. 37; 37 Digest 248, 353; *Poor Law Commissioners of Ireland v. Liverpool Vestry* (1869), 34 J. P. 294; 37 Digest 339, 1430; *R. v. Much Hoole Overseers* (1851), 21 L. (J. M.) C. 1; 37 Digest 339, 1429.

(n) *R. v. Preston (Inhabitants)* (1840), 10 L. J. (M. C.) 22; 37 Digest 248, 424.

(o) Poor Law (Scotland) Act, 1845 (8 & 9 Vict. c. 83), s. 77.

actually born in England except in the case of a wife or child removed together with the husband or parent (*p*).

Where an English born or Irish born person has resided continuously in Scotland for not less than five years, of which not less than one year shall have been continuously in the parish for which he applies for relief, and to have maintained himself without having recourse to common begging, either by himself or his family, and without having received parochial relief, he is thereupon irremovable from Scotland on becoming chargeable (*q*).

Wherever any poor law authority has obtained a warrant for the removal from any area in Scotland or Ireland of any English born or Irish born poor person, who has not acquired a settlement by residence in Scotland, such poor person, if he or she has resided continuously in the poor law area for not less than one year before the date of the application for relief, may appeal to the Scottish Board of Health and the Board shall determine whether it is reasonable and proper that such poor person should be removed (*r*). The Board when deciding as to whether such removal is reasonable and proper, shall have regard to (a) the length and character of the residence in Scotland, (b) the causes why a settlement has not been acquired, or if acquired has not been retained, (c) any circumstances tending to show that the exercise of the power of removal would unduly injure the interests of the poor person on account of the industrial employment of his children or otherwise (*s*). The decision of the Scottish Board of Health would appear to be final.

The county or county borough in England or Ireland to which the person is sought to be removed has also the right of appeal to the Scottish Board of Health.

The poor person can appeal, only if he or she has resided continuously for a certain period in Scotland, but the county or county borough in England or Ireland can appeal, whether or not the poor person has resided continuously (*t*).

By the law of the Channel Islands it would appear that no settlement can be acquired therein otherwise than by birth, so an English born person can be removed to his place of settlement in England however long he has lived in the Channel Islands.

A native of England, who is chargeable in Scotland owing to being of unsound mind, may be removed to the place of his birth in England (*u*). There does not appear, however, to be any corresponding power in England to remove to Scotland a person who is born in Scotland if he has become chargeable in England owing to being of unsound mind. [332]

(*p*) *Re Alston's Application for Removal Order* (1903), 68 J. P. 80; 27 Digest 339, *l.*

(*q*) Poor Law (Scotland) Act, 1898 (61 & 62 Vict. c. 21), s. 4.

(*r*) *Ibid.*, s. 5 (1).

(*s*) *Ibid.*, s. 53.

(*t*) *Edinburgh Parish Council v. Scotland Local Government Board*, [1915] A. C. 717, H. L.; 37 Digest 339, *m.*

(*u*) *City of London Union v. Parish of Arisarg, and Moidart re Bungeroth* (1930). See "Reference to Minister of Health," *ante*, p. 160.

SEVERANCE

See COMPENSATION AND TOWN PLANNING.

SEWAGE DISPOSAL

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See also titles :

FRESHWATER FISHERIES ;
POLLUTION OF RIVERS ;
REFUSE ;
SALMON AND TROUT FISHERIES ;
SEA FISHERIES ;

SEWERAGE AUTHORITIES ;
SEWERS AND DRAINS ;
SEWERS, CONSTRUCTION, MAINTENANCE
AND PROTECTION OF ;
TRADE EFFLUENTS.

The Legal Aspect.—The existing statute law bearing upon sewage disposal is contained in the following Acts : The Rivers Pollution Prevention Acts, 1876 and 1893 (a) ; The Salmon and Freshwater Fisheries Act, 1923 (b) ; The P.H.A., 1936 (c) ; and The P.H. (Drainage of Trade Premises) Act, 1937 (d).

The P.H.A., 1936 (c), requires every local authority to provide an effective sewerage system for their district, and to deal effectually with the sewage by means of sewage disposal works or otherwise (e). A local authority may now by agreement, and with the approval of the M. of H., discharge sewage to the sewers or sewage works of another local authority (f), the former restriction of such agreements to adjoining authorities having been removed. This possibility of disposing of sewage at the existing works of another authority ought nowadays always to be given primary consideration, as leading to greater efficiency and economy, and avoiding the undesirable multiplication of sewage works.

(a) 20 Halsbury's Statutes 316, 345. See the titles POLLUTION OF RIVERS ; TRADE EFFLUENTS.

(b) 8 Halsbury's Statutes 780. See the title SALMON AND TROUT FISHERIES.

(c) 29 Halsbury's Statutes 309.

(d) 30 Halsbury's Statutes 695. See the title TRADE EFFLUENTS.

(e) S. 14 ; 29 Halsbury's Statutes 333.

(f) P.H.A., 1936, s. 28 ; 29 Halsbury's Statutes 347 ; cf. P.H.A., 1875, s. 28 (repealed) ; 13 Halsbury's Statutes 638.

A local authority may not discharge sewage to any natural or artificial stream, watercourse, canal, pond or lake, until it has been so treated as not to affect prejudicially the purity and quality of the water into which it is discharged (*g*). Further, the duties of a local authority in regard to sewerage and sewage disposal are to be carried out so as not to create a nuisance (*h*). Two matters incidental to land drainage may require consideration in connection with sewage disposal schemes. Where a local authority propose to construct a sewer which will cross or interfere with any watercourse or works under a land drainage authority, work must not be commenced until the latter have been given due notice and any objections met, or the M. of H. after a local inquiry has approved the proposals either with or without modification (*i*). In certain cases it may also be necessary to obtain the consent of a land drainage authority, not only as regards constructional works but even to discharge of effluent, where works of land drainage are affected (*k*).

In the case of estuarial and coastal towns, before a sewage outfall or other works is constructed below high-water mark—that is, across a foreshore—the approval of the Board of Trade must be obtained (*l*). [333]

Objects of Sewage Disposal.—From about the middle of last century, sewage disposal has really been a question of rivers pollution prevention. In general, this implies the purification of sewage to such an extent that streams receiving sewage effluent are maintained as far as possible in a natural condition—that is, there should be no apparent pollution or nuisance, the amenities and benefits of streams should be preserved for all rightful users, and the normal biological aquatic life should be protected from injury. Where streams are used as sources of domestic water supply, sewage purification may necessitate the adoption of special safeguards. Before considering how the above objects may be attained, some explanation of the usual effect of discharging sewage matter into streams is necessary. The nuisances most likely to arise are : deposits of foul solids on the beds and banks of the streams ; turbidity and discolouration of the water ; and, what is particularly undesirable, the deprivation of the stream water (through fermentative action) of a large proportion of the dissolved oxygen essential for maintaining clean conditions and supporting aquatic plant and animal life. The fundamental aims of modern sewage purification processes are therefore (a) the elimination and disposal of the solid constituents of sewage, and (b) the clarification and/or biological oxidation of the liquid portion to such a degree that the receiving stream will not be prevented from maintaining a sufficiently high content of dissolved oxygen to ensure clean and healthy conditions. [334]

Standards of Purification.—There are no general legal standards of purification with which sewage effluents must comply. Neither the Rivers Pollution Prevention Act, 1876, nor the P.H.A., 1936, is helpful in that respect. The former does not define sewage matter, so the question arises, at what stage of purification does an effluent cease to be sewage matter ? In the latter, it may be equally difficult

(*g*) P.H.A., 1936, s. 30 ; 29 Halsbury's Statutes 348.

(*h*) *Ibid.*, s. 31 ; *ibid.*

(*i*) *Ibid.*, s. 15 (2), (3) ; *ibid.*, 334 ; cf. Land Drainage Act, 1930, s. 44 ; 23 Halsbury's Statutes 561.

(*k*) *Ibid.*, s. 334 ; *ibid.*, 533.

(*l*) *Ibid.*, s. 340 ; *ibid.*, 535.

to decide when sewage has been so treated as not to affect prejudicially the purity and quality of the water into which it is discharged.

The effect of discharging sewage or sewage effluent into a stream will be largely dependent on the dilution afforded by the stream itself. This point was considered by the last Royal Commission on Sewage Disposal (1898—1915), which went closely into the question of fixing legal standards of purity (*m*). During recent years there has been a tendency towards recognising the general standard recommended by the Royal Commission as a fair criterion for sewage effluents discharged into non-tidal streams—that is, to be satisfactory an effluent should not contain more than 3·0 parts per 100,000 of suspended solids, and should not take up more than 2·0 parts per 100,000 of dissolved oxygen in five days at 65° F.

A precedent in regard to legal standards has recently been created by the Hertfordshire County Council (Colne Valley Sewerage, etc.) Act, 1937 (*n*). This Act provides, under penalty, that a prescribed amount of sewage and stormwater shall be treated to comply not only with the previously mentioned standard, but shall be free from offensive odour and shall not become dark coloured when incubated for five days at 80° F.

It may be taken, therefore, that the above standards represent the degree of efficiency now expected of inland sewage works, where the effluents are discharged into non-tidal waters. If an effluent complies with these standards, it will usually satisfy the requirements of river authorities and most riparian owners. [335]

Nature and Composition of Sewage.—From the practical standpoint sewage may be regarded as the spent water supply of a community. It may contain varying proportions of waste waters from domestic and manufacturing operations, supplemented by such ground, surface and storm water as may have access to the sewers. Sewage generally may be said to consist of a mixture of saline matter in solution and nitrogenous and carbonaceous organic matter in solution and suspension together with a certain amount of grit and mineral matter. The objects to be aimed at in its purification are the removal of the suspended matters and the oxidation of the remaining organic matter and ammonia (*o*).

It is very important to note that, while sewage liquids are similar in nature, their exact composition is fundamentally dependent upon local conditions. Such factors as hardness of water supply, habits and staple occupation of the community, separate or combined systems of sewerage, and volume and character of trade refuse may not only be responsible for wide difference between the sewages from different communities, but cause the sewage of a town to vary in composition and rate of flow with the time of day and day of the week. Further, the character of a sewage may be affected if pumping is necessary before treatment, or, by septic action, if the liquid has to flow a long distance before reaching the purification works.

The constituents of sewage requiring removal or purification are present in the sewages of different towns in widely varying proportions and amounts, but may be classified as occurring in three distinct physical states : (1) organic and inorganic solids in suspension, readily

(*m*) Royal Commission on Sewage Disposal, 8th report, 1912.

(*n*) 1 Edw. 8 & 1 Geo. 6, c. lxxxix.

(*o*) Royal Commission on Sewage Disposal, 5th report (1908), p. 1.

removable partly by mechanical means and partly by settlement; (2) organic matter emulsified or finely dispersed in colloidal form, unsettleable but removable by chemical precipitation or biological processes; and (3) substances in true solution, not removable as such, but convertible to stable non-putrefactive products by biological decomposition and oxidation.

It is therefore of primary importance that, before designing a sewage treatment plant, the amounts of the above types of impurities normally contained in a sewage should be correctly ascertained by chemical analysis of truly representative samples. The analysis must be comprehensive enough to furnish information respecting any peculiarities in the nature of the sewage which may necessitate special methods of treatment, and to provide the figures requisite in calculating the "strength" of sewage. The latter will largely determine the nature and extent of purification works required, and may even indicate what system of treatment is likely to be most satisfactory and economical.

[336]

Strength and Volume of Sewage.—The investigations of the last Royal Commission on Sewage Disposal, together with the results of practical experience since accumulated, have enabled the M. of H. to formulate certain "requirements" respecting the design and capacities of sewage treatment plants, based upon two main factors of "strength" and "dry weather flow" of sewage to be treated. These requirements, while affording a reliable guide under ordinary conditions, may require modification to meet abnormal local circumstances. Further, they relate particularly to those methods of purification which have been in general use for a good many years, and are only partly applicable to modern aeration processes.

By "strength of sewage" is meant the amount of oxygen required (in parts per 100,000) to oxidise bio-chemically the whole of the organic matter and ammonia present. As this determination requires too much time to be practicable it is usual to rely upon approximate estimations of strength of sewage, which can be more quickly arrived at by the procedure set out below.

STRENGTH OF SEWAGE

1. M. of H. Requirements :

Samples taken in dry weather for seven days in proportion to flow. Note rainfall each day and for seven days previous to commencement of sampling.

Analysis should state in parts per 100,000 :

- | | |
|---|--------------------------|
| 1. Ammoniacal Nitrogen. | 5. Ditto, in four hours. |
| 2. Albuminoid Nitrogen. | 6. Suspended solids. |
| 3. Total Nitrogen. | 7. Dissolved solids. |
| 4. Oxygen absorbed in 3 mins. from N/8 permanganate at 80 degrees Fahr. | 8. Chlorides (Cl). |

Oxygen absorbed in Four Hours

		Parts per 100,000
"Strong" sewage	- - - - -	17 to 25
"Average" sewage	- - - - -	10 to 17
"Weak" sewage	- - - - -	7 to 10

2. Royal Commission on Sewage Disposal : (5th Report, Appendix IV.)

Calculated from results of analysis as above, using Dr. McGowan's formula :

For sewages : (Ammon. N. + Organic N.) \times 4.5 + (Oxy. Abs. in four hours from N/8 permanganate at 80 degrees Fahr.) \times 6.5.

	Parts per 100,000
"Strong" or "Very Strong"	- - - - - 175 or more
"Average"	- - - - - 100 to 175
"Weak"	- - - - - 60 to 100

The dry weather flow (D.W.F.) of sewage is the average daily volume reaching a sewage works during a period of settled fine weather. At all but very small works, this flow should be ascertained by fixing a suitable measuring and recording instrument. Failing that, the flow may be measured by means of a rectangular weir or V-notch, or by timing the filling of existing tanks. No works of any size can, however, now be considered complete unless a flow recorder forms part of the permanent equipment. By maintaining a continuous record of flow it is possible not only to determine and periodically check the basic dry weather flow, but to obtain useful information respecting hourly and daily variations of flow, volumes of infiltration water and trade wastes, and amount of sewage reaching the works in wet weather.

According to the M. of H. requirements it is the usual practice to construct sewage works of sufficient capacity to treat fully in wet weather up to three times the dry weather flow, and to provide partial treatment for flows between three and six times dry weather flow. The sewerage system is generally designed to permit stormwater sewage in excess of six times dry weather flow to pass direct to streams by means of suitably located overflow weirs. The latter should be provided with scum boards to prevent the overflow of large floating solids, and with adjustable plates to allow the overflow levels to be raised in proper relation to any increase in dry weather flow which may occur. (Storm water overflows should never be fixed in positions where nuisance is likely to be caused.) These requirements are subject to modifications in those cases where sewage contains a large proportion of trade refuse. A distinction must then be made between domestic sewage and trade refuse, as the latter is not materially affected by rainfall. The factors previously mentioned will still apply to domestic sewage, but it will generally suffice to allow for an increase of ten per cent. in respect of trade refuse. It is of greater importance to know the maximum rates of discharge of trade refuse to the sewers during working hours of the day, as storm water overflows must be set high enough to prevent them being brought into operation in dry weather by sudden flushes of trade refuse. Special arrangements may also have to be made at the sewage works for receiving and equalising the flow of such discharges through the treatment plant. It is always desirable that questions of this nature should be settled in consultation with the M. of H. and any river authority concerned, before preparing a scheme of sewerage and sewage disposal. [337].

Methods of Sewage Purification.—As it is not possible within the scope of this article to review historically the development of sewage purification processes, a short bibliography is appended to enable information on that subject to be readily obtained. [338].

Disposal by Dilution.—Where sewage can be discharged into large bodies of clean water, as at towns situated on the coast or on large rivers, the natural agencies of dispersion and self-purification are often sufficient to dispose of it without nuisance. Increasing care is, however, being taken at holiday resorts on the coast to preserve beach amenities to the fullest extent, and consequently schemes for sewage treatment are being more widely adopted. Except where an outfall can be constructed to ensure the sewage being carried safely and rapidly away by strong currents, it is now considered necessary to provide some treatment before discharging sewage into tidal waters. Local conditions determine the nature and extent of treatment, according to the objects

to be achieved and the interests affected. Important matters which may require consideration include those relating to fisheries, shell-fisheries, pollution of harbours and beaches, and excessive growth of sea-weed. Only in a few exceptional cases have complete purification works been provided at coastal towns. The partial treatment generally adopted involves one or more of the following operations, namely, removal of the larger floating solids by screening; reduction of the sewage solids by mechanical disintegration to so fine a state that they are quickly and harmlessly dispersed; and storage of the sewage in tanks to allow its discharge at the most favourable state of ebb-tide.

In regard to disposal of sewage by dilution in rivers, the Royal Commission on Sewage Disposal made the following recommendations:

<i>Dilution</i>				<i>Purification Required</i>
500 times or more	-	-	-	Screens and detritus tanks only.
300 to 500 times	-	-	-	Settling tank treatment—suspended solids not to exceed 15 parts per 100,000.
150 to 300 times	-	-	-	Settling tank treatment (chemical precipitation if necessary)—suspended solids not to exceed 6 parts per 100,000. [F339]

Preliminary Processes.—As previously mentioned on page 166, the impurities in sewage are present in three different states. The most easily removable of these is the solid matter in suspension, and all modern methods of treatment now aim at accomplishing this removal by certain mechanical and chemical processes which are generally classified as preliminary processes.

The first stage consists in removing the large floating solids, by intercepting them either on screens or in small tanks. Screens are usually formed of vertical or inclined iron bars, spaced $\frac{1}{2}$ inch or more apart according to the size of solids which it is desired to remove. At some works the bars are several inches apart, the object being to retain only those solids which might interfere with the working of pumps or other mechanical equipment. In other cases screening is much finer, and at larger works screens are equipped with mechanical cleaning devices sometimes designed to operate automatically. The material removed from the screens, whether by hand-raking or mechanically, is best disposed of by burying in land. At small works where regular attention cannot be afforded, the use of screens should be avoided. An alternative to screening is to trap the solids in tanks of suitable capacity fitted with submerged inlets and outlets, or with barriers (scum boards).

The second stage is the removal of heavy solids such as sand and grit (detritus), though some engineers prefer that this operation should precede screening. The usual practice is to provide two or more tanks to permit the velocity of flow through one or more of them to be reduced under all conditions of flow up to $6 \times D.W.F.$, so that only the heavy solids are deposited. At all modern works of any size it is now customary to design and equip detritus tanks so that the settled solids can be removed regularly by mechanical elevator, dredger or grab. The nature of the material removed varies considerably at different works, ranging from almost clean grit to thick sludge containing much organic matter. The former can be disposed of by tipping, but it is often necessary to deal with the latter along with sludge from other portions of the works.

The third stage consists in removing the lighter suspended solids

by further sedimentation of the sewage in larger tanks. This tank treatment, now invariably on the continuous-flow principle, is one of the most important parts of sewage purification, as it is possible thereby to remove from 50 to 80 per cent. of the impurities rapidly and at comparatively low cost. In the case of strong sewage, or sewage containing certain types of trade refuse, it may be necessary or advisable to assist settlement of the solids by adding to the sewage chemicals which bring about coagulation and flocculation of the finer solids and colloidal matter. The chemicals usually employed are lime, aluminium sulphate, iron sulphates and vitriol, according to the nature of the sewage. The extent to which purification should be carried by tank treatment is largely governed by the subsequent method of purification to be adopted ; but the more efficient the tank treatment, the more amenable will the sewage be to further purification. In reaching a decision on this point, questions of efficiency and economy must be considered together.

The tank capacity for chemical precipitation is less than for simple settlement, but choice in regard to design of tanks is mainly dependent upon local conditions and/or the preference of the engineer responsible for the scheme. The rectangular settling tank with length about three times the breadth is still the type most commonly used, a convenient depth being from $4\frac{1}{2}$ to 6 feet. The sewage may enter the tanks either through a number of penstocks or over a weir extending the full width of the tank. In all cases the outlet should be over a similar weir at the opposite end of the tank. At both inlet and outlet ends, scum boards should be fixed to retain floating matter. The arrangements for cleaning the tanks usually comprise decanting valves for withdrawing the water down to near the level of the settled solids (sludge)—such water being returned to the incoming sewage for treatment—and a bottom valve through which the sludge is discharged separately. The tank floors are sloped towards the sludge valve to facilitate cleaning. With this type of tank, cleaning is not generally necessary more than once every few weeks. To avoid this periodical emptying before cleaning, the tanks at a few large modern works have been fitted with travelling scrapers which slowly push the settled sludge along the floors to sumps from which it can be evacuated.

Another form of tank often used is the "upward-flow" or "Dortmund" type. Upward-flow tanks are generally square in plan, with vertical sides for the first few feet of depth, and the bottom portion built in the form of an inverted pyramid. The sides are steep enough to allow the sludge to slide into a small sump at the bottom, from which it can be removed by hydrostatic head through a pipe extending from the sump to within a distance of 1 to 2 feet of top water level of the tank. The sewage enters the tank at the centre, passes downwards at a low velocity through a middle compartment to about half the depth of the tank, and then rises and overflows in a thin film along the whole tank periphery. This type of tank may also be constructed circular, with conical bottom portion. On a capacity basis, the upward-flow tank is more efficient than the rectangular : it also has the advantages that sludge can be removed automatically as often as desired, and that a smaller site is required. The disadvantages are: costly construction, especially in bad ground ; tendency for sludge to stick on the tank sides and become septic ; and more difficulty in dealing with the sludge, which is thinner and of greater volume than that from rectangular tanks.

Many other types of tank, of more intricate and costly design than those described, have from time to time been constructed at individual works ; but, despite the claims advanced for them, it cannot be proved that they offer any material advantages applicable to general practice.

The settling tanks ordinarily in use at sewage works should have sufficient capacity to treat effectively rates of flow up to $3 \times D.W.F.$. Flows between 3 and $6 \times D.W.F.$ are diverted by a separating weir placed after the screens, and treated in special tanks having a total capacity of not less than $\frac{1}{4} D.W.F.$, the tank effluent being afterwards discharged direct to stream. As it is necessary to clean these tanks after every storm, in readiness for the next, the rectangular form is nearly always used.

At works where there are wide fluctuations in the rate of flow of sewage—due, for example, to discharges of trade refuse or to the intermittent operation of sewage pumping stations—special tanks may be necessary for equalising the rate of flow through the main settling tanks. These tanks are allowed to fill during peak flows, and the contents are decanted during periods of low flow. [340]

MINISTRY OF HEALTH REQUIREMENTS

(Based on Recommendations of Royal Commission on Sewage Disposal,
5th Report, 1908)

System.	Settling Tank Capacity.	Percolating Filters.			
		Strong Sewage.		Weak Sewage.	
		Coarse or Medium.	Average Sewage.	Coarse or Medium.	Fine.
Detritus Tank	2 or more, each equal to 1-100 D.W.F.	15	25	40	X
Settling (continuous)	2 or more, total equal to 10 to 15 hrs. D.W.F.	45	70	100	100
Do. (quiescent)	8 or more, each equal to 2 hrs. D.W.F.	50	100	130	130
Precipitation (continuous)	2 or more, total equal to 8 hrs. D.W.F.	65	100	150	175
Do. (quiescent)	8 or more, each equal to 2 hrs. D.W.F.	100	130	170	200

Filtering Medium.—"Coarse" not to pass 1-inch sieve, "Medium" to pass 1-inch but not $\frac{1}{2}$ -inch sieve, "Fine" to pass $\frac{1}{2}$ -inch sieve.

Where marked X, "Fine" material is not desirable.

Where underlined, reduce by 10 if "Medium" is used.

"Coarse" material is desirable when liquid contains much suspended matter.

N.B. D.W.F. = minimum content in cubic yards of filter for treating appropriate figure 3 times D.W.F.

Storm Water Overflows.—To operate at 6 times D.W.F. No overflows at or near disposal works.

Screening.—All sewage, including storm water, to be screened.

Storm Water.—Over 3 times D.W.F. to be treated in two or more storm tanks (total capacity $\frac{1}{2}$ D.W.F.). No further treatment required. Land irrigation may be substituted for tanks.

Humus Tanks.—Filter effluent to be treated in two or more humus tanks (total capacity 4 hours D.W.F.).

The usual M. of H. requirements respecting rectangular tanks are set out in the Table on page 171. As regards upward-flow tanks, the required capacities are usually less and are based upon rate of upward flow, assuming the velocity to be uniform over the whole surface area of the tank. Satisfactory sedimentation is generally obtained by allowing for a rate of upward flow of 8 to 10 feet per hour when the tanks are dealing with $3 \times D.W.F.$ [341]

Biological Purification.—The next stage of purification is the treatment of the settled liquid by biological processes to render it stable and non-putrescible. The main object of these processes is to bring the impurities into intimate contact with air, in the presence of organisms capable of bringing about those changes which for convenience may be termed biological oxidation. The methods in general use for accomplishing this are land treatment, bio-filtration and the modern aeration processes. Under certain conditions, a combination of two of these may be feasible and desirable. A general conception of sewage purification when carried to a high degree by biological agencies is that it proceeds in three stages which are to some extent overlapping—coagulation and flocculation of finely-divided suspended and colloidal matter, bio-oxidation of carbonaceous organic matter, and oxidation of ammoniacal compounds (nitrification). Modern biological treatment is therefore directed to establishing favourable conditions under which the various micro-organisms can perform the above functions. It is as the result of efforts to intensify this biological purifying activity that successive advances have been made in the science of sewage purification.

The diagram on page 173 illustrates how the various processes most frequently used in sewage purification are interconnected, and how they can be combined to form complete schemes. [342]

Land Treatment.—The application of sewage to land began to be practised about 1840, and until the publication of the Interim Report of the Royal Commission on Sewage Disposal in 1901 the Local Government Board held that some form of land treatment was essential for satisfactory sewage purification. Afterwards, in view of the opinion expressed in that report, and because in many towns it had been found difficult or impossible to obtain sufficient suitable areas of land, such treatment rapidly fell into disfavour. It is only perpetuated on a large scale where the soil is specially suitable, and adoption of the method is now almost restricted to small works in rural districts.

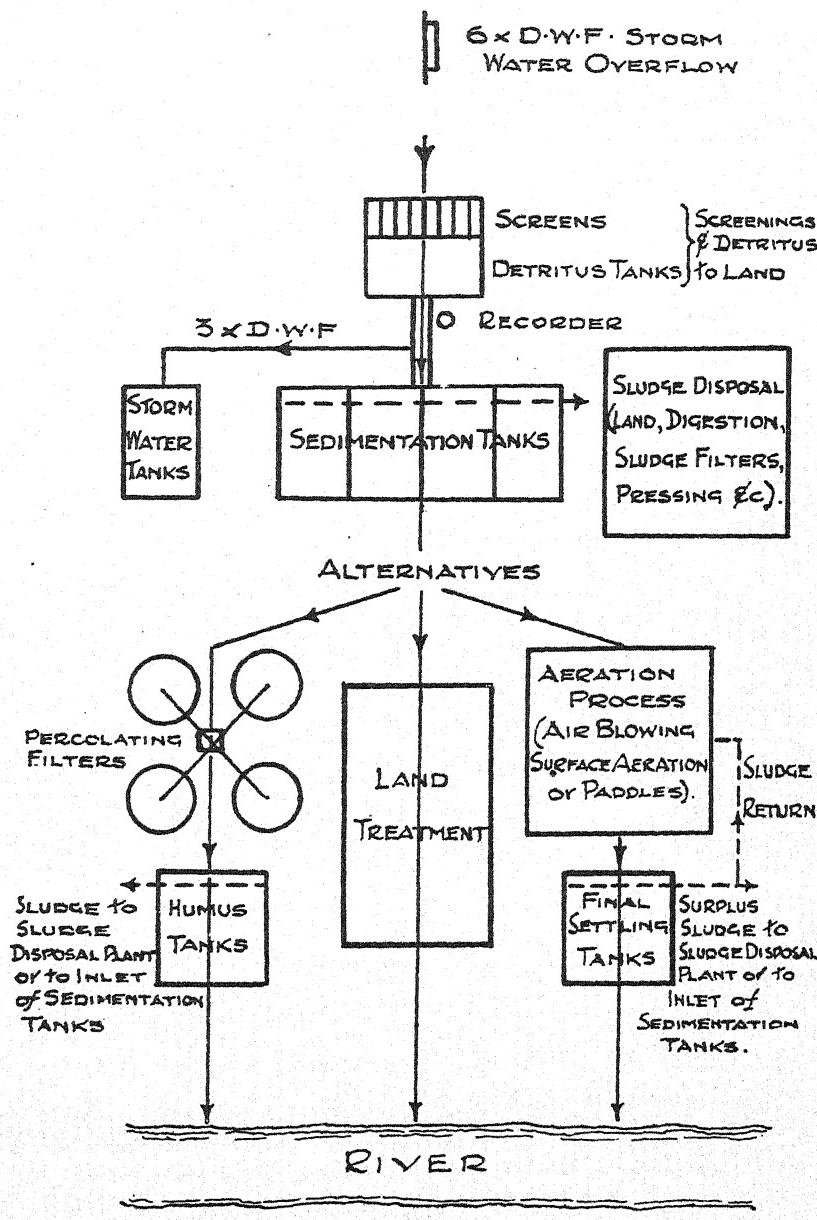
Two distinct systems of land treatment are in use, namely, broad irrigation and intermittent downward filtration. Choice of method is dependent upon the physical nature of the soil and the available fall between the surface of the land and the normal water level of the stream into which the effluent must be discharged.

In broad irrigation, the sewage is caused to flow over the surface of the land by commencing distribution at the highest point and constructing a series of contour channels for collecting and redistributing the liquid in successive stages down to the lowest point. Where little slope is available the ridge and furrow system is adopted. The sewage then flows along grips cut in the ridges, and either percolates or overflows into collecting channels along the furrows.

Intermittent downward filtration is practicable only where the soil is sufficiently porous to allow the sewage to percolate to a depth of several feet. With very open soil it may be possible to lose the liquid

entirely in the subsoil; but in most cases it is necessary to construct a system of underdrainage similar to that used for draining agricultural land. The site is then laid out in plots surrounded by embankments, each plot being flooded in turn with sewage and then being allowed to

FLOW SHEET ILLUSTRATING METHODS OF SEWAGE DISPOSAL



drain off and rest for a time. The periods of rest should be long enough to permit complete re-aeration of the soil, and this is assisted by cleaning or lightly ploughing the surface several times each year. As purification is chiefly due to the oxidising agency of soil bacteria, it follows that care must be taken to avoid clogging the interstices of the soil by overdosing with sewage solids, thus cutting off the supply of air and rendering the land "sewage sick." In all schemes of land treatment, therefore, intelligent supervision is essential for success. The area of land required in any particular case depends on the nature of the soil and the preliminary treatment to which the sewage has been submitted before application thereto. [343]

The Royal Commission on Sewage Disposal, after making careful investigations into land treatment, summarised its findings as follows :—

APPROXIMATE AREAS OF LAND OF VARIOUS QUALITIES REQUIRED FOR SEWAGE TREATMENT

(Abstracted from Fifth Report, Royal Commission on Sewage Disposal, 1898)

	Direct to Land.			After Precipitation or Mechanical Settlement.			After Filtration on Bacteria Beds.			
	Ratio of Population per Acre.	Gallons per Acre on Basis of 30 Gals. per Head.	Acres per 1,000 Persons.	Ratio of Population per Acre.	Gallons per Acre on Basis of 30 Gals. per Head.	Acres per 1,000 Persons.	Ratio of Population per Acre.	Gallons per Acre on Basis of 30 Gals. per Head.	Acres per 1,000 Persons.	
BROAD IRRIGATION										
Gravel	100	3,000	10	500	15,000	2	1,000	30,000	1	
Light loam	100	3,000	10	500	15,000	2	750	22,500	1½	
Heavy loam	75	2,250	13½	200	6,000	5	400	12,000	2½	
Chalk	—	—	—	—	—	—	—	—	—	
Peat	—	unsuitable	—	—	—	—	—	—	—	
Clay	50	1,500	20	100	3,000	10	300	9,000	3½	
INTERMITTENT FILTRATION										
Gravel	150	4,500	6½	500	15,000	2	1,000	30,000	1	
Light loam	150	4,500	6½	500	15,000	2	1,000	30,000	1	
Heavy loam	75	2,250	13½	300	9,000	3½	500	15,000	2	
Chalk	—	—	—	—	—	—	—	—	—	
Peat	—	75	2,250	13½	200	6,000	5	400	12,000	2½
Clay	—	—	unsuitable	—	—	—	—	—	—	

Bio-filtration.—The purification of sewage by means of artificial biological filters (percolating filters) was introduced and developed between 1891 and 1897. Since that time the system has been widely adopted, and although other methods have been devised more recently it is still the predominant practice in England. In the modern percolating filter the biological processes of purification are similar to those which occur in land filtration, but the filter is designed to provide conditions under which those processes are accelerated and intensified. Thus, large volumes of sewage can be treated on comparatively small sites, with efficiency and at reasonable cost.

Long experience has resulted in the design, construction and capacity of percolating filters becoming almost standardised in relation

to strength and dry weather flow of sewage. Except where there are abnormal local conditions, a sewage disposal scheme will therefore be designed in accordance with the M. of H. requirements set out on pages 167, 171, *ante*.

Percolating filters are usually constructed about 6 feet in depth. The filtering medium may consist of any resistant material such as gravel, slag, clinker, coke or coal. The grading of the medium should be carried out with due regard to strength of sewage. Filters are either circular or rectangular in shape, the former being the more usual. In the best form of construction filter floors are of smooth concrete, well sloped to one or more outlet channels to assist draining and to prevent accumulation of solid matter. To ensure efficient aeration, the floor is provided with a false bottom of special tiles which support the filtering material and allow free passage of air. A layer of filter medium of about 6-inch size is placed on the floor tiles, and above this a layer about 4 feet thick of material 4- to 2-inch size. The surface layer for a depth of about 1 foot usually consists of material of 1-inch size, and finer medium should be avoided. As side aeration of filters is unnecessary, it is always better and neater to enclose filters by solid retaining walls, leaving apertures at the base so that there is free access of air to the underdrainage system. Except at very small works, distribution of liquid over percolating filters is effected by some type of machine automatically operated and controlled by the flow of liquid itself. There is a wide choice of such machinery, whether for use with circular or rectangular filters. By its use it is possible to spread uniformly over the whole filter surface, either continuously or intermittently, a regulated volume of sewage commensurate with the purifying capacity of the filter. The liquid becomes well aerated before it enters the filter, percolates slowly downwards in a thin film over the surface of the material— aerobic conditions being maintained in the interstices of the filter—and emerges from the underdrains. Several weeks of careful working are required to bring a new filter into proper activity. Each particle of medium then becomes coated with a gelatinous film of organic matter, forming the nidus of bacteria and higher organisms. By successive contact, the organic matter of the sewage is retained or absorbed on the now biologically active surface of the filter medium, particularly in the upper 2 to 3 feet. In the lower part, the ammoniacal constituents of the sewage are oxidised to nitrates by the action of nitrifying bacteria. The organic matter retained by the filter gradually undergoes decomposition and oxidation through biological agencies until it is converted into an organic substance resembling humus, in which form it is continuously carried away in suspension by the filter effluent. [344]

Humus Tanks.—As the organic debris evacuated from percolating filters is liable to undergo secondary decomposition if allowed to settle and lie on the beds of streams, it is necessary to provide settling tanks for its removal from the filter effluent. These final settling tanks (humus tanks) are similar in design to those previously described, but the total capacity required need not generally be more than four hours D.W.F., as the solids settle fairly readily. After this final settlement, the effluent is discharged to stream. [345]

Aeration Processes.—These processes originated from the discovery about 1914 that it is possible to purify sewage without the aid of filters, by blowing air in sufficient quantity and for a long enough period through

a mixture of sewage and biologically active material similar to that which forms in percolating filters. In the early experiments the active material (activated sludge) was produced by blowing air through sewage until nitrification was complete. The clear liquid was then decanted from the settled coagulated solids, fresh sewage was added and aeration continued as before. This procedure was repeated many times, and it was found that as the deposit accumulated the time for each succeeding nitrification decreased, until, by the time the activated sludge occupied one-quarter of the aeration vessel, six hours' air blowing with subsequent settlement produced a liquid as good as effluents from efficient percolating filters. A quicker method of preparing the activated sludge is by aerating sludge from humus tanks until the nitrification stage has been reached.

The activated sludge prepared as described corresponds to the gelatinous film which coats the medium of a percolating filter; but in the aeration processes the active material is maintained in circulation with the sewage in tanks, instead of being supported upon solid surfaces over which the liquid trickles as in percolating filters. As the purification of the sewage proceeds, the impurities are continuously converted into more activated sludge, part of which is again used for the purification of further quantities of sewage, and part disposed of as surplus sludge.

In practice the aeration processes fall into two classes, according to whether circulation and aeration of the mixture of active sludge and sewage are effected by compressed air or mechanical agitation. When compressed air is used, it is applied through porous tiles or "diffusers" suitably spaced along the floors of the aeration tanks. The latter are rectangular in plan, but depths may be from 6 to 10 feet. They are divided longitudinally by partition walls into series of channels communicating at the ends, so that the sewage is made to flow through channels several times the length of the tanks. Baffle walls are constructed across the channels with openings near floor level and adjacent to a diffuser, to prevent uneven flow and to ensure that in passing from one compartment to the next the whole of the sewage comes into intimate contact with the small bubbles of air issuing from the diffusers. Under average operating conditions, from 1 to $1\frac{1}{2}$ cubic feet of free air per gallon of sewage is required, and the ratio of the floor area of the aeration tank to the total area of the diffusers should be about 10 to 1. Aeration tanks must be of such capacity in relation to D.W.F. and strength of sewage that the time taken by the sewage to flow through (retention period) is long enough for complete purification. According as the sewage ranges from very weak to strong, retention periods of from 8 to 24 hours may be required. The proportion of activated sludge (measured after settling for 1 hour) maintained in circulation in the aeration tank is usually within the limits of 10 to 20 per cent., the best amount being determined by actual experience of operating the particular plant. The liquid leaving aeration tanks contains a large proportion of the active sludge, and this must be removed by settlement in upward-flow tanks (capacity 2 to 4 hours D.W.F.) before the effluent is discharged to stream. The settled sludge is withdrawn continuously, sufficient being returned to the aeration tank to maintain the purification process, and the surplus usually being pumped back for settlement along with the untreated sewage reaching the works. The difficulties of dealing separately with large volumes of very thin activated sludge are thus reduced, as the mixed sludge from the pre-

liminary settling tanks can then be disposed of by the methods described later.

When aeration is effected by compressed air, most of the air is used in keeping the sewage and active sludge in circulation. Only a small proportion is needed to supply the atmospheric oxygen required for biological oxidation, and it is probable that most of this oxygen is dissolved during the bursting of air bubbles at the surface of the liquid. In view of this, aeration systems have been designed in which circulation is effected mechanically and in such a manner that the continuous exposure of fresh surfaces of the liquid enables the necessary amount of atmospheric oxygen to be taken into solution. The two best-known methods of mechanical aeration are the "Simplex" Surface Aeration and the Haworth (Sheffield) Bio-aeration systems. Both of these are in successful operation at a number of works of various sizes.

The Simplex plant consists of a series of tanks 20 to 25 feet square and 15 to 18 feet deep, with the bottoms sloping to a central pocket 3 to 4 feet in diameter. In the centre of each tank is fixed a vertical iron tube about 3 feet in diameter, extending from near the top to within 6 inches of the bottom. At the top of the tube is suspended a saucer-shaped "cone" fitted with vanes on the upper surface. The outer edge of the cone terminates close to water level in the tank, and a central hole corresponds with the diameter of the tube. The cone is driven through bevel gearing, and when revolving throws out a film of liquid over the surface of the tank, thereby causing intense aeration of the mixture of sewage and active sludge. The rapid upward flow induced through the central tube creates a continuous downward flow in the peripheral portion of the tank, so that the whole contents are maintained in circulation. The tank capacity is designed in relation to strength of sewage to give a retention long enough for purification, an average period being about fifteen hours. The active sludge is separated and dealt with in a manner similar to that used in the diffused-air process.

In the Haworth bio-aeration system each plant unit consists of a rectangular tank, preferably not exceeding 200 feet in length and 4 feet in depth, divided by thin partition walls into longitudinal channels about 4 feet wide. These are connected at alternate ends, and the first and last are connected by a cross channel, so that the whole system forms a circuit round which the sewage and active sludge are circulated. The velocity ($1\frac{1}{2}$ to 2 feet per second) necessary to keep the sludge in suspension and to provide the required aeration is imparted by paddle wheels, about 9 feet in diameter, attached to shafting extending across the middle portion of the tank. Alternate wheels rotate in opposite directions, each in turn thus producing the required forward movement along its respective channel. The successive impulses of the paddle blades set up a wave motion along the channels, which, in conjunction with the splashing action of the paddles, causes sufficient atmospheric oxygen to be dissolved for supporting biological purification of the sewage. Fresh settled sewage is continuously admitted to the first channel, and an equal volume of purified liquid is displaced over a long weir on the last channel. The effluent is passed through upward-flow tanks for the separation of the active sludge before being discharged to stream, and the settled sludge is dealt with as in the other aeration processes. Rather longer retention periods are necessary with this type of plant, as aeration by paddles is less intense than by the other

methods described. It is usual to provide aeration tanks having a total capacity equal to 16 to 24 hours D.W.F.

The use of aeration processes is progressing only slowly in England, as compared with America where many very large plants have been constructed during recent years. The chief explanations are that most English towns had provided sewage works on the percolating filter system before aeration methods were available, and that the new processes are not yet trouble-free when treating strong sewage or sewage containing certain trade wastes. In addition, the working expenses, especially for the necessary power, are greater than for percolating filter plant. On the other hand, aeration processes have the advantages of being cheaper in construction, requiring less site area, and producing a minimum of nuisance.

It is necessary to obtain expert advice when considering the adoption of an aeration process. [346]

Sludge Disposal.—Except for the solids removed by screens and detritus tanks, the impurities eliminated during sewage purification remain to be dealt with as sludge. The amount and nature of the sludge is dependent upon the strength of sewage and on the method of treatment adopted. The percentage of water may range from 90 in the case of sludge from preliminary settling tanks, to 99 or more for sludge produced by aeration processes. Assuming the sludge from all processes to be reduced to 90 per cent. moisture, the amount likely to be produced per million gallons of sewage treated is from 30 to 40 tons with chemical precipitation, and from 15 to 20 tons with plain sedimentation. The composition of the solid matter in sludge differs considerably according to local conditions, but for ordinary domestic sewage about 60 per cent. of the solids are organic and the remainder inorganic.

The question of sludge disposal should always receive very careful consideration in connexion with every scheme of sewage treatment; for, unless ample provision is made, difficulties may be created in regard to the production of a satisfactory effluent. Briefly, the problem is to get rid of the material as quickly, hygienically and economically as possible. It will be evident, therefore, that its solution in any particular instance depends on selecting a method by which full advantage can be taken of local conditions and possibilities.

The dumping of sludge at sea is practised by several large cities in Great Britain, and this involves the use of specially built tankers for carrying the material far enough into deep water to prevent nuisance or damage. For large towns suitably situated this method is the most economical.

The ploughing of wet sludge into land is one of the best and cheapest methods of disposal where conditions are favourable, but it is liable to serious interference in wet weather. The method consists in distributing wet sludge over land previously ploughed into furrows, then burying it by splitting the ridges and forming new furrows ready for the next application. Sometimes the system is carried out in conjunction with growing crops, by using and cultivating plots of land in rotation. The addition of lime to the sludge assists in separating water and tends to prevent odours, but the main difficulty lies in burying the sludge in wet weather, even when a tractor is available.

An alternative method of sludge disposal on land is by trenching. In this case manual labour must be employed, as wide and deep trenches are necessary. The method is more independent of weather conditions

than ploughing, because it is possible to make sufficient trenches during summer months for receiving the sludge produced during winter. Parallel trenches 3 feet wide and $2\frac{1}{2}$ feet deep are dug well in advance of the time for filling, to allow the soil to dry. A distance of 6 feet is left between them, the excavated soil being thrown on this intervening land. Sludge is run into the trenches, allowed to drain, and the process repeated until the trenches become filled to ground level with sludge containing about 70 per cent. moisture. New trenches are then prepared in the 6 feet spaces between the original ones. After the second year trenching is carried out at right angles to the former direction. In this manner the sludge becomes incorporated in the soil and slowly rots away. For disposing of sludge either by ploughing or trenching on land of average quality it will generally be necessary to allow 1.25 square yards per head of population where the sewage is weak, 1.5 square yards per head where the sewage is medium strength, and 1.75 square yards per head where the sewage is strong or contains trade refuse.

When the wet sludge cannot be directly applied to land, the most widely adopted method of reducing the water content to allow the partially dried material to be removed without difficulty is to drain the sludge on specially constructed drying beds. This process is employed at about three-quarters of the total number of sewage works in England. The construction of the beds varies greatly. Some are merely lagoons with earth banks; others are carefully constructed with walls, concrete floors, drains and carefully graded filtering medium. In the former case the water is absorbed in the soil, but in the latter it is usually collected and pumped for treatment through the works. Evaporation as well as drainage often plays an important part in reducing the sludge to a spadeable condition. In most cases the dried sludge (containing about 70 per cent. moisture) is carted away to agricultural land for use as manure. The usual M. of H. requirement for well-designed sludge-drying beds is that 1 square yard should be provided for every seven persons served by the sewage works. The total area of drying beds should be divided into a suitable number of units, so that each may be filled, emptied and prepared in turn, without having to run wet sludge on to sludge which has partly dried.

Even under the best weather conditions, dealing with sludge on drying beds is comparatively slow and may cause objectionable odours. To overcome these difficulties it is becoming an established practice, where large quantities have to be disposed of, to subject sludge to a preliminary process of digestion. This consists in retaining the sludge in special tanks, in which it undergoes decomposition by anaerobic fermentation, accompanied by separation of a large proportion of water and liberation of much gas. By drawing off the water, the bulk of sludge may be reduced by about one-half. The digested sludge, being of a more granular nature owing to the decomposition of greasy and colloidal matters present in the fresh sludge, dries far more rapidly and without nuisance on the drying beds. Further, it is possible to collect the gas and to utilise it for power production and/or warming the digesting sludge to accelerate fermentation. There are now several sewage works where all the mechanical plant is driven by power obtained from sludge gas, and where the waste heat from the power plant is used for maintaining the sludge at the optimum temperature for digestion. Sludge digestion may be carried out either in one or two stages, the latter being generally preferable and more satisfactory for English practice.

It is difficult to lay down any uniform basis for the calculation of digestion tank capacities, and expert advice should therefore always be obtained before adopting the process. At one works where the sludge is maintained at a temperature of 24 to 27° C. a digestion tank capacity of 3 cubic feet per head of population served has been provided, and this allows a theoretical retention period of about 80 days, during which the sludge undergoes decomposition. At another works where the sludge is not heated, a digestion tank capacity of 4 cubic feet per head has been provided. These examples may be regarded as typical.

The gas evolved during sludge digestion contains about 70 per cent. of methane and has a calorific value of 625 to 700 B.Th.U. The average daily gas production from a complete digestion plant is about 0·75 cubic feet per head of population.

The use of the filter-press for reducing sludge to a portable form was first adopted in England about 60 years ago, and for many years the process was applied extensively, especially at sewage works where chemical precipitants were used. It is sometimes assumed that filter pressing is an unpleasant and costly process, justifiable only where site restrictions necessitate the removal of sludge from the works without delay, or in a few cases where the press cake contains sufficient grease to warrant its recovery and the conversion of the residue into fertiliser. This assumption is not well founded, for with modern plant and careful management filter-pressing can be carried on under clean and economical conditions. Furthermore, the process is independent of the weather, is capable of dewatering sludge far more expeditiously and thoroughly—down to 55 to 60 per cent. moisture—than can be effected by drying beds, and almost entirely eliminates the need for handling the material. The process is therefore worthy of consideration where large quantities of sludge have to be dealt with in thickly populated areas.

From time to time, other mechanical methods of dewatering sludge have been tried, such as centrifugal machines, rotary vacuum filters, and spray driers. So far, these have only been used on an experimental scale in England.

The ultimate object of sludge disposal is to get the material back to the land as quickly and economically as possible, and without nuisance. The best process for any particular community to adopt is therefore that by which this object can be most readily achieved. [347]

London.—The P.H. (London) Act, 1936 (*p*), places a duty on the L.C.C. to construct such sewage works as they think necessary for the effective sewerage and drainage of the county, for improving the main drainage and for preventing, as far as practicable, the sewage from passing into the Thames in or near the county. The L.C.C. (*q*) and metropolitan borough councils (*r*) may, for the purpose of clearing, cleansing and emptying sewers vested in them, construct reservoirs, sluices, engines and other works. The L.C.C. may sell or dispose of the sewage and must, in deodorising or disposing of sewage, avoid creating a nuisance thereby, and the Secretary of State may make inquiry into complaints and take or direct proceedings for prevention or abatement of nuisance (*q*). “Deodorising” includes the separation of solid from liquid matter or the neutralisation of the noxious or offensive properties of the sewage (*s*).

(*p*) S. 28; 30 Halsbury's Statutes 458.

(*r*) S. 21; *ibid.*, 455.

(*q*) S. 31; *ibid.*, 460.

(*s*) S. 81 (1); *ibid.*, 488.

Subject as hereinafter-mentioned, to pass the sewage into the Thames either inside or outside the county is not forbidden. If, however, a nuisance is caused an injunction may be granted at the instance of an owner whose property is injured (*t*). The outfalls of the L.C.C. are protected by P.H.A., 1936 (*u*), and the Rivers Pollution Prevention Act, 1876 (*a*). The sewage of metropolitan boroughs is discharged directly into the L.C.C. main sewers. The L.C.C. may make orders for the guidance and control of borough councils as to the construction, maintenance, inter-communication, etc., of sewers (*b*). Previous to 1936 a borough council, even with the consent of the L.C.C. could not agree to bind itself irrevocably to receive sewage from outside the county (*c*); and save in the case of the West Kent Main Sewerage Board by an agreement under sect. 52 of the West Kent Main Sewerage Act, 1875, or where specially authorised (*e.g.* Part VII., L.C.C. (G. P.) Act, 1908—Hackney and Tottenham Sewerage) neither the L.C.C. nor a borough council could dispose of sewage by discharging it into the sewers of an authority outside the county, but these matters are now provided for by the P.H.A., 1936, sect. 28 (2) (*d*).

The L.C.C. maintains a system of main drainage whereby the sewage passing into the local sewers vested in the City corporation and metropolitan borough councils is collected by main and intersecting sewers and conveyed to outfall works for treatment and disposal. Certain out-county districts have been admitted under various Acts of Parliament into the London main drainage system subject to various conditions, including the payment of annual contributions. There are now about 400 miles of main, intersecting and storm relief sewers vested in the council, five main stations for pumping the dry weather flow and storm water, and seven stations for pumping storm water only. The sewage is treated at two outfalls, the effluent being discharged into the Thames and the sludge poured into sludge vessels and discharged at sea. There is a fleet of four sludge vessels with a total capacity of 5,300 tons.

The net capital outlay upon the London main drainage system up to March 31, 1935, was £16,518,598, and the net debt in respect of such expenditure was, at the same date, £5,683,496.

The Port of London (Consolidation) Act, 1920, sect. 229 (*e*), prohibits sewage from being sent into the Thames or into any tributary where not lawfully so sent at the passing of that Act. Sect. 230 (*f*) provides that the London Port Authority shall give notice in writing for discontinuance of pollution even though lawful before the passing of the Act and failure to discontinue shall be a misdemeanor. Sect. 236 (*g*) gives power to the London Port Authority to stop up outlets

(*t*) *Price's Patent Candle Co., Ltd. v. L.C.C.*, [1908] 2 Ch. 526, affirmed (1911), 75 J. P. 329, H. L.; 38 Digest 45, 268; but see also *A.-G. v. Metropolitan Board of Works* (1863), 9 L. T. 139; 38 Digest 42, 246; and *Dixon v. Metropolitan Board of Works* (1881), 7 Q. B. D. 418; 38 Digest 48, 279.

(*u*) S. 335; 29 Halsbury's Statutes 533.

(*a*) S. 18; 20 Halsbury's Statutes 328.

(*b*) P.H. (London) Act, 1936, s. 33; 30 Halsbury's Statutes 462.

(*c*) *St. Mary, Islington, Vestry v. Hornsey U.D.C.*, [1900] 1 Ch. 695; 41 Digest 32, 234; see also *L.C.C. v. Acton U.D.C.* (1902), 18 T. L. R. 689, C. A.; 41 Digest 32, 235.

(*d*) 29 Halsbury's Statutes 347.

(*e*) 18 Halsbury's Statutes 667.

(*f*) *Ibid.*, 668.

(*g*) *Ibid.*, 670.

of sewers, etc., after conviction. The rights of the L.C.C., however, are saved by sect. 465 (h). Under sect. 235 (i) sanitary authorities, owners and occupiers must give information to the Port of London Authority on demand as to plans, etc., of sewers. [348]

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(h) 18 Halsbury’s Statutes 734.

(i) *Ibid.*, 670.

SEWAGE WORKS

See SEWAGE DISPOSAL.

SEWERAGE AUTHORITIES

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Introduction.—Generally the duty of providing sewers and sewage disposal works lies upon local authorities within the meaning of the P.H.A., 1936, *i.e.* councils of boroughs and of urban and rural districts. These local authorities are, therefore, by far the most usual and the most important sewerage authorities.

Such authorities, however, have found that their functions in respect of sewerage can often best be performed in combination rather than severally. The most complete form of such combination is the constitution of a joint sewerage board and the latter may have been constituted either by virtue of a private Act of Parliament or by means

of a Provisional Order made in pursuance of the P.H.A., 1875, and confirmed by Parliament or, since October 1, 1937, by means of an order of the M. of H. made under sect. 6 of the P.H.A., 1936. Another method of joint action is that whereby local authorities do not go to the extent of constituting a joint board but merely agree to undertake their sewerage functions in combination and through the medium of a joint committee.

Highway authorities again are the responsible authorities so far as the sewers and drains connected with their highways are concerned.

Finally, there are various authorities, catchment boards, drainage boards and to some extent commissioners of sewers whose functions include the construction and maintenance of conduits which may properly be termed sewers.

Private individuals or companies who own sewers cannot be regarded as "sewerage authorities." [350]

Local Authorities.—The general duty to provide for the sewerage of any district is laid on the local authority of that district by sect. 14, P.H.A., 1936 (a).

The term "local authority" is defined by sect. 1 (2) of the same Act (a) as meaning the council of a borough (including here both county and non-county boroughs), urban district or rural district. The term will be used in this sense throughout this title.

The extent of the obligation imposed by this section has been the subject of decision in the courts; and is indicated in the annual report of the Minister of Health for 1934-35 at p. 29, where it is stated that the duty to cause sewers to be made does not require an authority to provide sewers in anticipation of the future requirements of their district or to enable a landowner to develop his land for building. The remedy in the case of any alleged failure in their obligation is now by way of complaint to the M. of H. (b), and the statement in the Minister's report thus assumes an added importance as a *quasi-judicial* pronouncement. The obligation now covers the provision of sewers and also the provision of sewage disposal works or other means of dealing with the contents of sewers.

A local authority are empowered to acquire by agreement, whether by way of purchase, lease or otherwise, any sewer or sewage disposal works or the right to use any sewer or sewage disposal works (c). Thus, they may take over the functions and the property of profit-making sewerage bodies (see p. 191, *post* (c)). Moreover, by sect. 17 of the P.H.A., 1936 (subject to the conditions and qualifications therein mentioned), a declaration may be made by a local authority that any sewer or sewage disposal works within or serving their district or any part thereof not completed before October 1, 1937, shall as from a specified date become vested in them. Notice must be given to the owner or owners of the sewer or sewage disposal works in question, and a period of two months must elapse in which an appeal may be brought before any action is taken. *Per contra*, the owners may make an application to the local authority requesting such a declaration. Against the proposal or refusal to make a declaration aggrieved owners may appeal to the M. of H. The section sets out the procedure, some of the relevant considerations in the determining of such appeals and the

(a) 29 Halsbury's Statutes 333. See also title SEWERS, CONSTRUCTION OF.

(b) P.H.A., 1936, ss. 321-325; 29 Halsbury's Statutes 524-533.

(c) *Ibid.*, s. 15 (1) (iii); *ibid.*, 334.

notices that have to be served on other authorities. Where the sewers or works are vested in another local authority, county council or a joint sewerage board or in a railway company or dock undertakers (so far as works are situated in or on their land and held for the purposes of such undertakings), a local authority may not make a declaration under the section, except upon application of the other body concerned. Sect. 18 legalises agreements to make such declarations on the completion of proposed sewers or sewage disposal works.

Sewerage Authorities and other Bodies. (a) *Drainage Authorities.*—Local authorities, when their proposed sewers will cross or interfere with any watercourse or works vested in or under the control of land drainage authorities (see sect. 5, *infra*), must give notice to the latter (d); and the drainage authorities are given a right of objection to the proposed works, which may not then be proceeded with unless objections are withdrawn or the M. of H. after a local inquiry approves the proposals, with or without modification (e).

(b) *Parish Councils and Meetings.*—Similarly, rural district councils, as sewerage authorities, must give notice to parish councils (or, in the absence of such, to parish meetings) of parishes to be served by their proposed works, but here there is no express right of objection by the parish authorities (f). Local sewerage authorities intending to execute sewerage works outside their district must publish a notice and serve a copy on the appropriate local authority, and the latter and owners of land affected are given a right of objection. This requirement does not apply where the works consist solely in the construction of a public sewer in a highway repairable by the inhabitants at large and the consent of the local authority has been obtained (g).

(c) *Other Local Authorities.*—Again, before and after declarations are made under sect. 17 (*supra*) respecting works in or serving other local authorities, notices must be given to the other local authorities and their consent is necessary unless dispensed with by the Minister (h). Similar provisions apply to the making of agreements that a declaration shall be made in the future (i).

(d) *Highway Authorities.*—The P.H.A., 1936, contains detailed provisions regarding the relationship between local authorities as sewerage authorities and highway authorities so far as concerns sewers in the highway. At the outset it should be noted that among the works which can be enforced by highway authorities, as private street works, is the construction of sewers (see title PRIVATE STREET WORKS). Sewers made by the owners of houses in a private street, though made for the purpose of draining their own amongst other houses, were not sewers made for profit within the meaning of P.H.A., 1875, sect. 4 (k).

(e) *County Councils as Highway Authorities.*—There are vested in local authorities as sewerage authorities all sewers constructed before October 1, 1937, as part of any private street works except "any such

(d) P.H.A., 1936, s. 15 (2); 29 Halsbury's Statutes 334.

(e) *Ibid.*, s. 15 (3); *ibid.*

(f) *Ibid.*, s. 15 (4); *ibid.* See, however, Lumley's Public Health, 11th ed., note at p. 34.

(g) *Ibid.*, s. 16; *ibid.*, 335. And see Lumley's Public Health, 11th ed., pp. 34—6.

(h) *Ibid.*, s. 17 (7), (8); 29 Halsbury's Statutes 337.

(i) *Ibid.*, s. 18 (3); *ibid.*, 340.

(k) See *Action Local Board v. Batten* (1884), 28 Ch. 283; 49 J. P. 357; 41 Digest 5, 16; *Pinnock v. Waterworth* (1887), 51 J. P. 248; 3 T. L. R. 563; 41 Digest 18, 136.

sewer which by virtue of sect. 29 of the L.G.A., 1929 (*l*), will vest in the county council" (*m*). Sect. 29 of the L.G.A., 1929, deals with county roads and provides that all county roads and drains belonging thereto shall vest in the county council while the county council shall continue to have the right to use drains and sewers used for any purpose in connection with the drainage of any such road (*n*), and that differences between county councils and district councils as to such vesting of drains and roads and/or the right to use drains and sewers are to be decided by the M. of H. (*o*).

The relationship between sewerage authorities and county councils regarding the drains and sewers under the control of the respective authorities for sanitary and for highway purposes, is dealt with in detail in sect. 21 of the P.H.A., 1936, as follows :

"(1) Subject to the provisions of this section, a county council and a local authority may agree that : (a) any drain or sewer which is vested in the county council in their capacity of highway authority may, upon such terms as may be agreed, be used by the local authority for the purpose of conveying surface water from premises or streets ; (b) any public sewer vested in the local authority may, upon such terms as may be agreed, be used by the county council for conveying surface water from roads repairable by the county council.

"(2) Where a sewer or drain with respect to which a county council and a local authority propose to make an agreement under this section discharges, whether directly or indirectly, into the sewers or sewage disposal works of another sewerage authority, the agreement shall not be made without the consent of that other sewerage authority, who may give their consent upon such terms as they think fit.

"(3) A county council or local authority shall not unreasonably refuse to enter into an agreement for the purposes of this section or insist unreasonably upon terms unacceptable to the other party, and a sewerage authority shall not unreasonably refuse to consent to the making of such an agreement or insist unreasonably upon terms unacceptable to either party thereto, and any question arising under this section as to whether or not any authority or council are acting unreasonably shall be referred to the Minister, whose decision shall be final.

"(4) Nothing in this section shall be construed as limiting the rights of a county council under sub-sect. (2) of sect. 29 of the L.G.A., 1929."

(f) *Communication between Sewers of Different Local Authorities.*—The P.H.A., 1936, provides that sewerage authorities may agree, with the approval of the M. of H., that their sewers shall communicate with the sewers, or discharge into the sewage disposal works, of another sewerage authority (*p*). The section contains a further qualification where the sewers of one authority discharge into the sewage disposal works of another by providing that the first-mentioned authority shall not agree to admit further sewage into their sewers without the consent of the last-mentioned authority. "Sewerage authority" includes local authorities, the councils of metropolitan boroughs, county councils and joint sewerage boards (*q*). [351]

(*l*) 10 Halsbury's Statutes 903.

(*m*) P.H.A., 1936, s. 20 (1) (c) ; 29 Halsbury's Statutes 341.

(*n*) L.G.A., 1929, s. 29 (2) ; 10 Halsbury's Statutes 903.

(*o*) *Ibid.*, s. 29 (3) ; *ibid.*

(*p*) S. 28 ; 29 Halsbury's Statutes 347.

(*q*) P.H.A., 1936, s. 90 ; *ibid.*, 392.

Combinations of Local Authorities.—The provision of adequate sewers and sewage disposal works is often a matter of some difficulty for local authorities, on account of the limited area in which they operate and of their limited financial resources.

Sewerage in Rural Districts.—Parliament has recognised this last-mentioned handicap so far as rural district councils are concerned. The Royal Commission on Local Government preceding the L.G.A., 1929, pointed out that the practical way of getting over the difficulties of smallness of administrative area was an extension of the area of charge for certain essential services, particularly the provision of a proper water supply and a system of sewerage and sewage disposal. It has therefore been provided that the expenses (and sewerage expenses are such) of a rural district which are payable as special expenses and could therefore properly constitute a separate charge on any contributory place, may be charged wholly or in part by the R.D.C. as part of their general expenditure (*r*).

In addition to this provision spreading the sewerage cost over the whole area of the rural district the latter may obtain assistance from the county council. A county council can agree to contribute to the cost incurred on sewers and sewage disposal works by any district council wholly or partly within their county, such sums as the county council think reasonable in the circumstances, while the R.D.C. may relinquish to the county council certain of their functions, including the provision of sewers and sewage disposal works (*s*). [352]

(i.) *Joint Sewerage Boards.* P.H.A., 1936.—This Act now specifically refers to joint sewerage boards. Sect. 17 which deals with the making of declarations by local authorities vesting public sewers in themselves, expressly provides that no such declarations may be made regarding sewers or sewage disposal works of joint sewerage boards except on the latter's application (*t*).

The term "joint sewerage board" is defined in sect. 90 (*u*) as including any authority or committee constituted for the purpose of collecting and dealing with the contents of sewers from the districts of two or more local authorities; while the same section includes joint sewerage boards, county councils and councils of metropolitan boroughs with local authorities as sewerage authorities within the meaning of the Act.

In the unlikely event of their having such a common interest in a sewerage scheme, a county council and county borough council could establish a joint sewerage board through the instrumentality of which they would discharge such sewerage functions under sect. 8 of the P.H.A., 1936. In such a case there would be an order of the M. of H. establishing the board as a body corporate in the usual manner (the consent of all the councils concerned being pre-requisite thereto), but there would be no constitution of a united district for the discharge of the particular functions.

General provisions regarding orders under sects. 6 and 8 are contained in sects. 9 and 10 of the Act (*v*).

It is to be observed that under sects. 6 and 8 no specific power is given to the M. of H. to assign to the joint board the functions or rights

(*r*) L.G.A., 1933, s. 190 (4); 26 Halsbury's Statutes 409.

(*s*) Rural Water Supplies Act, 1934, s. 2; 27 Halsbury's Statutes 727; P.H.A., 1936, ss. 307, 308, 320, 322; 29 Halsbury's Statutes 517, 524, 525.

(*t*) P.H.A., 1936, s. 17 (9); 29 Halsbury's Statutes 337.

(*u*) 29 Halsbury's Statutes 392.

(*v*) *Ibid.*, 326—329.

of a local authority under any enactment contained in the P.H.A., 1936. *Semblé*, therefore, sect. 272 (w) which deals with the powers of councils to combine (see *infra*), cannot apply to joint boards.

The expenses of joint boards are dealt with by the P.H.A., 1936, sect. 309 (x). (See titles JOINT BOARDS AND COMMITTEES).

(a) Joint Boards Constituted by Parliament.—The usual procedure is that the councils of local authorities promote an Act of Parliament constituting and incorporating a joint board consisting of representatives of each of these authorities and authorising the board to construct main trunk sewers and other works for the disposal of the sewage of their district. The board is, of course, a legal entity in whom all trunk sewers and the sewage disposal works are vested. The constituent authorities still remain responsible for the sewers which are not trunk sewers in their district. In cases where it is proposed to include authorities in the joint scheme against their wishes, it would appear to be essential to proceed by way of the promotion of a private Act of Parliament in view of the disinclination, virtually amounting to refusal, of the M. of H. formerly to make a provisional order, and probably now to make an order under sect. 6 of the P.H.A., 1936, in cases where one of the proposed constituent authorities is unwilling to enter into the combination.

The private Act incorporates relevant provisions of the P.H.A. and the board is accorded the status as to powers, rights, duties, capabilities, liabilities and obligations, of a sanitary authority under such provisions. In some instances, such private legislation is promoted by the council of the county in which the joint sewerage scheme is to be established, e.g. Middlesex County Council Act, 1931; Hertfordshire County Council (Colne Valley Sewerage Scheme) Act, 1937 (y).

(b) Joint Boards Constituted by Provisional Order Confirmed by Parliament.—Sect. 279 of the P.H.A., 1875 (z), provided that the then Local Government Board, now the M. of H., might by provisional order form a united district, *inter alia*, for the following purpose :

“The making of a main sewer or carrying into effect a system of sewerage for the use of all such districts or contributory places.”

Applications had to be made to the Minister by the local authorities of the urban or rural districts concerned, the governing body in the united district was to be the joint board constituted as provided by the provisional order, and such provisional order was of no force unless and until it was confirmed by Parliament (a).

This procedure by way of provisional order was formerly open to authorities desirous of forming united districts for other purposes, including any purposes of the P.H.A., 1875. In practice it was extensively used in regard to sewerage schemes, e.g. the Upper Stour Valley and the Portsdown and Southwick Joint Sewerage District Orders.

Sect. 279 of the P.H.A., 1875 (a), has now been repealed by the P.H.A., 1936, so that as from October 1, 1937, it has been impossible to form a sewerage authority of this type. The new procedure set out in sect. 6 of the 1936 Act (a) has been substituted (see *infra*). The new

(w) 29 Halsbury's Statutes, 498.

(x) *Ibid.*, 518.

(y) 1 Edw. 8 & 1 Geo. 6, c. lxxxix.

(z) 13 Halsbury's Statutes 742. See now P.H.A., 1936, s. 6; 29 Halsbury's Statutes 326.

(a) 1875 Act, s. 297 (3); 13 Halsbury's Statutes 749. See now L.G.A., 1933, s. 285; 26 Halsbury's Statutes 456.

Act has not, of course, interfered with the status and powers of joint boards formed and constituted prior to its operation (*b*).

(c) Joint Boards Constituted by Order under Sect. 6 of the P.H.A., 1936 (*a*).—This section is a new introduction in the P.H.A., 1936, the chief difference between it and sect. 279 of the P.H.A., 1875 (see *supra*), which is now repealed, lying in the fact that the orders of the M. of H. under the new section can be made effective, in the absence of opposition, without any reference to Parliament. This section has come into operation since the writing of the title "Joint Boards," and will therefore be dealt with in some detail.

Sub-sect. (1) provides that if on application made to him by some or all of the local authorities of the districts to which the application relates, it appears to the M. of H. that it would be to the advantage of those districts or any of them or any parts thereof to be constituted a united district for any purpose of the Act—the provision of sewers and sewage disposal works is plainly such—or of the P.H.A., 1875 to 1932, so far as the same are unrepealed, the Minister may by order constitute for that purpose a united district consisting of such of those districts or parts of districts as can in his opinion be combined advantageously.

The procedure in regard to such applications, it would appear, is still governed by the instructions issued by the M. of H. as to applications under sect. 279 of the P.H.A., 1875. These require a resolution of the local authority of each district specifying the purposes of constituting a united district, the basis of representation on the joint board and of contributions thereto. Certified copies of such resolutions, together with any existing agreements regarding the combination of authorities, should also be sent to the Minister. As a matter of general policy, apart from what will be said later in the discussion of the section, the assent of all local authorities concerned is virtually essential for the success of the application.

Sub-sect. (2) lays down that a joint board shall be the governing body of the united district. This is to be constituted by the order and is to consist of representatives of constituent authorities. A proviso adds that if the county council contribute to the board's expenses as they may do (*c*) the order may provide for the inclusion of representatives of the county council up to half the total number on the board.

The joint board shall be a body corporate by such name as the order determines, have perpetual succession, a common seal and the usual power to hold land (sub-sect. (3)).

Sub-sect. (4) lays down the procedure immediately prior to the making of an order. Notice must be given by the Minister to the local authority of every district which or any part of which is proposed to be included in the united district and to the county council. If, within twenty-eight days, notice of objection is given by any of such authorities to the Minister and such objection is not withdrawn, then the order is provisional only and shall not have effect until confirmed by Parliament. In the event of a continued objection, therefore, the procedure under sect. 6 approximates to that under the former sect. 279.

Finally, sub-sect. (5) provides that the expenses of constituting a united district shall be payable by the joint board and so far as the

(*b*) P.H.A., 1936, Sched. III., Part I.; 29 Halsbury's Statutes 545.
 (*c*) *Ibid.*, s. 207; *ibid.*, 517.

Minister may have incurred such, he may recover them from the board as a debt due to the Crown.

Sect. 7 of the Act (*d*) deals with the effect of the establishment of a joint board. In such event, the local authority shall cease to discharge in relation to its area any sewerage functions which are those of the joint board. But the Minister may at any time, subject to such conditions and restrictions as he may impose, authorise the local authority to discharge functions concurrently with the board; and, with his approval, the joint board may delegate any of their functions to a constituent authority. [353]

(ii.) *Joint Committees*.—Sect. 272 of the P.H.A., 1936, expressly empowers any two or more councils by agreement to combine for the purposes of any of their functions under the Act. This power is given to councils generally, and it therefore applies both to local authorities within the meaning of the Act and also to councils of counties and rural parishes. All such authorities, therefore, may combine for the purposes of the provision of sewers and sewage disposal works.

The section provides that this power is without prejudice to the power of combination conferred on local authorities (*i.e.* councils of counties, county boroughs, county districts and rural parishes), by the L.G.A., 1933. Sect. 91 of the latter Act (*e*), therefore, apparently still applies to local authorities so far as their sewerage functions are concerned. It provides that these authorities may combine with any one or more other authorities in appointing from amongst their numbers a joint committee for any purpose in which they are jointly interested. They may delegate to this committee with or without restrictions and conditions as they think fit, any of their functions relating to that purpose except the power of levying, or issuing a precept for, a rate, or of borrowing money. The doubt as to the application of this section to local authorities in respect of their sewerage functions arises from the fact that in sect. 91 it is stated that nothing in the section shall authorise the appointment of a joint committee for any purpose for which the appointing authorities are authorised or required to appoint a joint committee by any other enactment for the time being in force (*f*).

A joint committee is not a body corporate capable itself of constructing and owning and maintaining sewers and sewage disposal works. The responsible sewerage authorities would still be the respective combining authorities. In practice, therefore, it is hardly likely that resort will be had to the procedure of the establishment of a joint committee, particularly in view of the facility with which joint boards may now be established in pursuance of sect. 6 of the P.H.A., 1936 (*supra*). [354]

Highway Authorities. County Councils.—County councils have vested in them all drains belonging to county roads and they have the right of continuing to use drains or sewers used for any purpose in connection with the drainage of such roads (*g*). This matter has been dealt with under “Local Authorities” (*h*). To this extent the county council is the responsible sewerage authority.

Urban District Councils.—Where urban district councils retained

(*d*) 29 Halsbury's Statutes 327.

(*e*) 26 Halsbury's Statutes 355.

(*f*) L.G.A., 1933, s. 91 (4); *ibid.*

(*g*) L.G.A., 1920, s. 29 (2); 10 Halsbury's Statutes 903.

(*h*) See *ante*, p. 183.

main roads under sect. 11 of the L.G.A., 1888 (*i*), or where they have "claimed" county roads in pursuance of sect. 32 of the L.G.A., 1929 (*j*), then the drains belonging to the roads and the right to use sewers and drains for the drainage of such roads continue to be vested in the U.D.C. as highway authority. Generally street drains and sewers in urban districts vest in the urban district under the P.H.A.

Rural District Councils.—So far as rural district councils are concerned, by the L.G.A., 1894 (*k*), they obtained the powers of highway authorities in whom highway drains, and sewers were vested, but highway drains did not thereby become sewers for sanitary purposes. Under the L.G.A., 1929 (*l*), all the highways in rural districts became county roads and the highway drains and sewers were vested in county councils. The delegation of road functions to R.D.Cs. (*ll*) does not divest such drains and sewers from the county council.

Generally, now, reference should be made to sect. 21 of the P.H.A., 1936, as to the relationship between county councils and local authorities in respect of drains or sewers in highways: see "Local Authorities" (*m*). And see L.G.A., 1929, sect. 30 (*n*).

Owners of Land and Highway Drains.—At common law it is still the duty of owners and occupiers of land adjoining the highway to cleanse and scour their own ditches so as to prevent nuisances or obstructions to passengers on the highway, but it is not their duty to provide or keep ditches or other means of draining the road. The Highway Act, 1885, however, empowers the highway authority to make, scour, cleanse, etc., a drain for the highway paying the owner any damage he might sustain thereby (*o*).

Private Street Works and Sewers.—Private street works, as has been seen above (see LOCAL AUTHORITIES, *supra*), includes the provision of sewers. Further the Private Street Works Act, 1892, authorises the construction of separate sewers for sewage and surface water (*p*). In rural districts, functions in regard to such works were by the L.G.A., 1929, Sched. I., Part I., vested in the county council. The schedule, however, expressly provides that the county surveyor when preparing his specification of private street works under sect. 6 (2) shall, if and so far as the works include sewers, consult the R.D.C. The reason for this provision is, of course, that the latter authority *qua* sanitary authority is the responsible sewerage authority. [355]

Land Drainage Authorities.—These authorities were dealt with by the Land Drainage Act, 1930, and a full account of the types and functions of such authorities will be found in the title LAND DRAINAGE and the titles noted therein, to which, generally, reference should be made.

The P.H.A., 1936, contains two references of some importance to these authorities, namely, sect. 15 (2) (*q*) and sect. 330, which empowers land drainage authorities after giving reasonable notice to the local authority concerned at their own expense and on substituting other

(*i*) 10 Halsbury's Statutes 693.

(*j*) *Ibid.*, 906.

(*k*) S. 25; 10 Halsbury's Statutes 794.

(*l*) S. 30; *ibid.*, 904.

(*ll*) S. 35; *ibid.*, 910.

(*m*) See *ante*, p. 183.

(*n*) 10 Halsbury's Statutes 904.

(*o*) Highway Act, 1885, s. 67; 9 Halsbury's Statutes 83.

(*p*) Private Street Works Act, 1892, s. 9 (1); 9 Halsbury's Statutes 199.

(*q*) See *ante*, p. 184.

sewers, drains, culverts and pipes which would be equally effectual and will entail no additional expense on the local authority, to take up, divert or alter the level of any sewers, drains, culverts or pipes vested in the local authority which pass under or interfere with any water-course or other works vested in or under the control of the land drainage authority.

"Land drainage authority" means a drainage authority within the meaning of the Land Drainage Act, 1930 (*r*). [356]

Private Owners of Sewers and Works. *Private Ownership of Sewers and Drains.*—Private persons are entitled to construct and own sewers and sewage works upon their property or, by agreement, upon the property of others; but they do not thereby become sewerage authorities in the statutory sense. Owners or occupiers of premises or owners of private sewers are entitled to have their drains or sewers made to communicate with the public sewers of the local authority and thereby to discharge foul water and surface water from their premises or private sewer as the case may be (*s*). Conduits which were formerly, *i.e.* before October 1, 1937, combined drains (see title SEWERS AND DRAINS) and therefore the responsibility so far as maintenance was concerned of private owners, now become public sewers, but the cost of maintenance thereof may still have to be borne by the owners concerned (*t*). Finally, local authorities are now empowered to require the construction of a private sewer to drain buildings in combination (*a*). This is a more economical and advantageous proceeding than an insistence on their right to compel owners to make separate connections with a sewer.

Sewers Made for Profit.—The Act vests in the local authority as public sewers all sewers and sewage disposal works which by virtue of the P.H.A., 1875, were vested in the local authority immediately before the commencement of the Act. The 1875 Act excepted from the class of sewers which it vested in the local authority "sewers made by any person for his own profit or by a company for the profit of shareholders" (*b*). The construction of this expression has been the subject of a large number of decided cases (*c*). The Local Government and Public Health Consolidation Committee in their Second Interim Report sum up the effect of these decisions as follows:

- "(a) Whether a sewer is made for profit is a question of fact.
- "(b) A sewer may be made for profit though made purely for sanitary purposes and not, *e.g.* for securing a profit by disposing of the sewage.
- "(c) The fact that a sewer is made by a person developing a building estate in order to provide sanitation for the houses does not of itself constitute sufficient evidence that it was made for profit.

(*r*) P.H.A., 1936, s. 343; 29 Halsbury's Statutes 538. See Land Drainage Act, 1930, s. 81; 28 Halsbury's Statutes 582.

(*s*) P.H.A., 1936, ss. 34, 35; 29 Halsbury's Statutes 349—352.

(*t*) *Ibid.*, ss. 20, 24; *ibid.*, 341, 343.

(*a*) *Ibid.*, s. 38; *ibid.*, 354.

(*b*) P.H.A., 1875, s. 13 (1); 18 Halsbury's Statutes 631.

(*c*) See particularly *Acton Local Board v. Batten* (1884), 28 Ch. D. 283; 49 J. P. 397; 41 Digest 5, 16; *Pinnock v. Waterworth* (1887), 51 J. P. Jo. 248; 3 T. L. R. 563; 41 Digest 18, 136; *Bonella v. Twickenham Local Board* (1887), 18 Q. B. D. 577; 51 J. P. 580; affirmed 20 Q. B. D. 68; 52 J. P. 356; 41 Digest 19, 151; *Southstrand Estate Development Co., Ltd. v. East Preston R.D.C.*, [1934] Ch. 254; Digest Supp.

"(d) On the other hand, if a sewer is made by a person (other than the developer of the estate) who has purchased the right to construct it with the object of turning the like to account, it is made for profit."

To this, perhaps, may be usefully added the dictum of HUDDLESTON, B., in *Bonella v. Twickenham Local Board* (d). "No doubt the sewer was made for the use of the owners of the houses, but the words of the section are 'for his own profit' not 'for his own use.' An illustration of how the exception might apply occurs to me. It might refer to the case of a person who was utilising sewage and made a sewer to conduct the sewage to works used for that purpose or it might apply to a company formed for the purpose of making manure who might require to conduct the sewage to a particular place in the course of their business."

Where sewers or sewage disposal works were made for profit prior to the operation of the P.H.A., 1936, they will not vest in the local authority unless adopted under sect. 17, or acquired by agreement under sect. 15.

Sewers and Works Constructed after the P.H.A., 1936.—Sewers and sewage disposal works constructed after the commencement of the P.H.A., 1936, only vest in the local authority after a declaration of vesting has been made in pursuance of sect. 17 of the Act (e) or by agreement under sect. 15 (f). [357]

Remedies for Default.—The remedy in the case of default by a local authority in the performance of its duties is by way of complaint to the M. of H. in pursuance of sects. 321—323 of the P.H.A., 1936 (g), and not by *mandamus* (h), nor could an action for damages be brought for mere failure to perform such duties (i).

Certain other provisions of the P.H.A., 1936, may be noted here.

Sect. 278 enables persons to claim compensation where they have sustained damage by reason of the exercise by a local authority of any of their powers under the Act.

Sect. 30 provides that sewage must be treated before it is discharged into streams, canals, etc.

Sect. 31 states that the local authority shall so discharge its sanitation functions as not to create a nuisance. Where, therefore, a local authority discharges further sewage into an already overcharged public sewer they may become liable to an action for damages and/or injunction (k).

London.—The main sewers which, previous to 1855, were vested in the Commissioners of Sewers of the City of London and in the Metropolitan

(d) (1887), 18 Q. B. D. 577; 51 J. P. 580; affirmed 20 Q. B. D. 63; 52 J. P. 356; 41 Digest 19, 151.

(e) See *ante*, p. 187.

(f) 29 Halsbury's Statutes 384.

(g) *Ibid.*, 524, 525.

(h) *Passmore v. Oswaldtwistle U.D.C.*, [1898] A. C. 387; 62 J. P. 628; 41 Digest 19, 148. And see *Lumley's Public Health*, 11th ed., Vol. I., pp. 23 *et seq.*

(i) *Robinson v. Workington Corpns.*, [1897] 1 Q. B. 619; 61 J. P. 164; 38 Digest 152, 23. This case apparently is the better authority than Dent's case, *infra*; it was followed in *Hesketh v. Birmingham Corp.*, [1924] 1 K. B. 260; 88 J. P. 77; 38 Digest 48, 280.

(k) *Dent v. Bournemouth Corpns.* (1897), 66 L. J. (Q. B.) 895; 41 Digest 30, 225. In this case apparently, there was evidence of negligence in the original construction of the drain and in the construction of additional sewers and storm water drains and connecting the same therewith. The case was considered in *Hesketh v. Birmingham Corpns.*, *supra*.

Commissioners of Sewers, were vested in the Metropolitan Board of Works by the Metropolis Management Act, 1855, sect. 135 (*l*), and transferred thence under the L.G.A., 1888, sect. 40 (*m*), to the L.C.C. All other such sewers existing in 1855 were vested in Vestries and District Boards by the Act of 1855, sect. 68 (*n*), and transferred thence under the London Government Act, 1899, sect. 4 (*o*), to metropolitan borough councils. The powers of the present authorities are contained in the P.H. (London) Act, 1936. The City corporation is the authority for sewerage within the City, except main drainage (*p*). As to reception into the London main drainage system of drainage from out-country areas, see (*inter alia*), the L.C.C. (General Powers) Acts, 1897, Part V. (East Ham); 1903, Part IX. (Upper Norwood); 1906, Part III. (Hornsey); 1908, Part VII. (Tottenham), Part VIII. (Willesden); 1921, sect. 34 (West Ham); 1924, Part II. (Barnes); 1925, Part VI. (Walthamstow and Leyton); 1931, Part VI. (Beckenham). [358]

Sewering of Streets.—Where a borough council construct a sewer for the drainage of houses erected after January 1, 1856, or in or for the drainage of any street laid out after August 6, 1862, or any street which before August 7, 1862, had not been vested in highway authorities, or any street partly formed or laid out, the expenses are borne by the owners of the street or houses and of the land abutting on the street, as apportioned by the borough council (*q*). In the case of streets in which there have been previously no sewers or only open sewers, but where sewerage rates have been levied, the borough council may recover such part of the cost as it may determine (*r*). The borough council may charge owners of land abutting on a street in a less proportion than owners of houses (*s*), and may bear the whole or part of the cost themselves (*t*). The amount charged is payable either before, during or after completion of the sewer and works as the borough council may determine (*u*). Where the amount is paid before completion the borough council must recover any deficit from the owners or must repay them any excess, as the case may be (*a*). The borough council may allow payment by instalments over twenty years at 5 per cent. interest (*b*). Appeal against an order or resolution of the borough council lies to the L.C.C. (*c*).

Borough councils have powers to carry any sewer or works across or under any street and into, through or under any land whatsoever, and, where necessary, may carry any sewer or work outside the county and, subject to certain conditions, execute works outside the county (*d*). But no sewer shall, without the previous approval of the county council, be constructed either within or outside the county by a borough council

(*l*) 11 Halsbury's Statutes 917.

(*m*) 10 Halsbury's Statutes 718.

(*n*) 11 Halsbury's Statutes 895.

(*o*) *Ibid.*, 1227.

(*p*) City of London Sewers Act, 1897; P.H. (London) Act, 1936, s. 76; 30 Halsbury's Statutes 486.

(*q*) P.H. (London) Act, 1936, s. 23 (1); 30 Halsbury's Statutes 455.

(*r*) *Ibid.*, s. 23 (2); *ibid.*, 456.

(*s*) *Ibid.*, s. 23 (3); *ibid.*, 456.

(*t*) *Ibid.*, s. 23 (4); *ibid.*.

(*u*) *Ibid.*, s. 23 (5); *ibid.*.

(*a*) *Ibid.*, s. 23 (6); *ibid.*, 457.

(*b*) Metropolis Management Act, 1855, s. 216; 11 Halsbury's Statutes 938, applied by P.H. (London) Act, 1936, Schedule II; 30 Halsbury's Statutes 611.

(*c*) P.H. (London) Act, 1936, s. 71; *ibid.*, 484.

(*d*) *Ibid.*, s. 17 (2); *ibid.*, 453.

or by any other body having control of sewers within the county (e). The L.C.C. has similar powers to a borough council as regards carrying sewers through or under streets and land and, in addition, subject to certain restrictions (f), may construct works in and along the Thames (g). [359]

Expenses of Sewers and Sewerage Works.—The expenses of the L.C.C. on main drainage are payable as expenses for general county purposes (h). Expenses of borough councils are paid out of the general rate (i). Where a drain is made or branched into a sewer which was privately constructed in the first instance, contributions may by order be required from the owner of the premises to which the drain belongs, and upon receipt shall be paid to the person at whose expense the sewer was constructed (k). Orders may provide for payment by instalments, and in these cases the L.C.C. must keep available for public inspection a register of all the orders and payments (l). [360]

Miscellaneous Powers and Duties.—A borough council may under sect. 24 (l) of the P.H. (London) Act, 1936, substitute drains for ditches, and under sect. 26 (m) must pay compensation for interference with mills or any rights to the use of water. The L.C.C. may make bye-laws as to sewers, but such bye-laws are not to affect the City except as regards main drainage (n). The L.C.C. may transfer to an adjoining borough council the management of part of a borough for sewerage and drainage purposes (o) and may transfer to one borough council the duty of draining a street situate in more than one borough (p). The L.C.C. and borough councils have power to contract for the removal or purchase of dams, etc., obstructing the flow of water whereby sewerage and/or drainage is impeded, to purchase lands or easements for the purpose of preventing obstruction, to purchase or take on lease streams, etc., for cleansing sewers or for obtaining water supply other than for domestic or commercial use (q). Lands or easements may be acquired compulsorily by the L.C.C. only, and then only with the consent of the Secretary of State after public notice (q). Under sect. 70 (r) a borough council is expressly empowered to borrow for the purposes of Part II. of the Act. See sect. 78 (s) as to the application of fines and sect. 74 (t) as to the service of documents. Savings are contained in the Act for the Port of London Authority (u), for railway and canal companies (a), for disused drains on railway or dock premises (b), and for certain local enactments (c). [361]

(e) P.H. (London) Act, 1936, s. 27; 30 Halsbury's Statutes 458.

(f) *Ibid.*, s. 29; *ibid.*, 459.

(g) *Ibid.*, s. 28 (2); *ibid.*, 458.

(h) *Ibid.*, s. 287 (1); *ibid.*, 594.

(i) *Ibid.*, s. 287 (2); *ibid.*

(k) *Ibid.*, s. 54; *ibid.*, 474.

(l) 30 Halsbury's Statutes 457.

(m) *Ibid.*, 458.

(n) P.H. (London) Act, 1936, s. 34; 30 Halsbury's Statutes 462.

(o) *Ibid.*, s. 35; *ibid.*, 463.

(p) *Ibid.*, s. 36; *ibid.*, 464.

(q) *Ibid.*, s. 69; *ibid.*, 482.

(r) 30 Halsbury's Statutes 483.

(s) *Ibid.*, 484.

(t) *Ibid.*, 485.

(u) P.H. (London) Act, 1936, s. 77; 30 Halsbury's Statutes 486.

(a) *Ibid.*, s. 78; *ibid.*, 487.

(b) *Ibid.*, s. 79; *ibid.*.

(c) *Ibid.*, s. 80; *ibid.*

Vesting of Sewers.—Under the P.H. (London) Act, 1936, sect. 14 (d), there are vested in the L.C.C. all sewers and works constructed by them under the Act and all sewers and all works, rights and things connected therewith which were immediately before the commencement of the Act vested in the council. There are vested in borough councils all other sewers in the boroughs and works, rights and things in connection therewith, and all such works, rights and things in connection with sewers as were vested in the councils at the commencement of the Act. The sewers which were vested in the county council and the borough councils at the commencement of the Act included those sewers which were vested in the predecessors of the respective councils by the Metropolis Management Act, 1855, and had not been discontinued. Those sewers included a number of open streams or watercourses, many of which have since been culverted, and the works rights and things above-mentioned include the walls, defences, banks, outlets, etc., belonging to sewers and all other rights (including rights of way) incidental thereto. The sewers which vest in the borough councils include those made by private owners, even if made without the knowledge of the council (e). See also title SEWERS AND DRAINS. Sewers (other than main sewers of the L.C.C.) in the City are vested in the City corporation (f). The L.C.C. may under sect. 15 of the Act of 1936 (g) by order vest in themselves any sewers in the county not already vested in them, and may by order transfer to themselves any of the functions of a borough council under Part II. (Sewerage and Drainage) of the Act. With the consent of the L.C.C. a borough council may, by a resolution passed at a special meeting at which two-thirds of the total number of members of the borough council are present, transfer its functions under Part II. to the L.C.C. (h). [362]

(d) 30 Halsbury's Statutes 452.

(e) *St. Matthew, Bethnal Green, Vestry v. London School Board*, [1898] A. C. 190; 41 Digest 14, 100.

(f) City of London Sewers Acts, 1848 (s. 52), and 1897.

(g) 30 Halsbury's Statutes 452.

(h) P.H. (London) Act, 1936, s. 16; 30 Halsbury's Statutes 452.

SEWERAGE OUTFALL DISTRICT

See SEWERAGE AUTHORITIES.

SEWERS AND DRAINS

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See also titles :

DRAINS;
HIGHWAY AUTHORITIES;

LAND DRAINAGE AUTHORITIES;
SEWERAGE AUTHORITIES.

INTRODUCTION

The terms sewers and drains cover conduits of varying types and of different significance to local authorities and their advisers. In their most usual sense the terms are applied to conduits used for sanitary purposes, *i.e.* for the conveying of soil, sewage and waste water from buildings and, in the form of trade effluents, from industrial premises. Such sewers and drains are dealt with to the exclusion of all others in the major part of this title. Again the terms include channels and conduits adjacent to roads for the disposal of surface water therefrom. These highway drains and their relationship with sanitary sewers and drains have been referred to in the title SEWERAGE AUTHORITIES. Further comments will be made thereon in the second part of this title.

Finally, the terms may include conduits used for the drainage of land, as to which and the authorities responsible therefor, reference should be made to the title **LAND DRAINAGE**.

SEWERS AND DRAINS GENERALLY

A difficult question sometimes arises with reference to conduits and other works for drainage as to the legal category into which the particular conduit or work falls. Is it a sewer or a drain? The law relating to this question of legal status before the P.H.A., 1936, was "chaotic and contradictory" and "a disgrace to English legislation" (a). The Act has not abolished the necessity of making the classification; for in regard to works constructed before October 1, 1937 (b), the legal distinction must still be drawn between "sewers" and "drains," "single private drains," "combined drains" and "sewers made for profit."

CLASSIFICATION BEFORE THE PUBLIC HEALTH ACT, 1936

The conduits used in drainage for sanitary purposes were of five distinct types each with its own peculiar legal attributes:

- (i.) drains;
- (ii.) sewers;
- (iii.) single private drains;
- (iv.) combined drains;
- (v.) sewers made for profit.

The works or apparatus used for treatment and the ultimate "receptacles" of sewage were treated legally as outside and distinct from any of the above-mentioned legal types. [363]

Drains. What were Drains.—Sect. 4 of the P.H.A., 1875 (c), defined a "drain" as meaning "any drain of and used for the drainage of one building only or premises within the same curtilage and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed."

Whether two or more houses constitute one "building" is a question of fact (d). Two semi-detached houses may be one "building" (e).

The phrase "within the same curtilage" has been the subject of a few reported decisions. An arcade which was arched over and had twenty-four houses on each side thereof was held not to be such (f). Two blocks of back-to-back houses with a common access and common

(a) *Per SCRUTTON, L.J.*, in *Hill v. Aldershot Corpns.*, [1933] 1 K. B. 259; 96 J. P. 493; Digest Supp.

(b) P.H.A., 1936, came into operation on October 1, 1937, see s. 347 (1); 29 Halsbury's Statutes 542.

(c) 18 Halsbury's Statutes 624 (repealed).

(d) *Humphrey v. Young*, [1903] 1 K. B. 44; 67 J. P. 34; 41 Digest 3, 6.

(e) *Heedley v. Webb*, [1901] 2 Ch. 126; 65 J. P. 425; 41 Digest 3, 5. See, however, *Harvie v. South Devon Rail. Co.* (1874), 32 L. T. 1; 11 Digest 180, 576.

(f) *St. Martin-in-the-Fields Vestry v. Bird* (1894), 71 L. T. 432; affirmed, [1895] 1 Q. B. 428; 60 J. P. 52; 41 Digest 11, 81.

open space between them were also held not to be within the same curtilage (g). But two blocks consisting of forty-six sets of apartments and separated by a causeway 20 feet wide which opened on to a public highway and served as an access to one of the two blocks were held to be within the same curtilage, and the main drain was a drain and not a sewer (h).

The courts have decided that after the point where the conduit receives the drainage of more than one building (not being premises within the same curtilage), the conduit is a sewer (i). The fact that the conduit remains the same size makes no difference. Above that point, however, the conduit is a drain (k).

Vesting of Drains.—Drains did not vest in the local authority but remained the property of private owners, unless and until they became sewers (see *infra*). [364]

Sewers. What were Sewers.—These were defined by sect. 4 of the P.H.A., 1875, as follows :

"Sewer includes sewers and drains of every description except drains to which the word drain interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act."

The concluding exception has reference to highway drains which will be dealt with in the concluding part of this title.

The word "sewer" comes from the word to "sew," i.e. to drain, and has a much more extended significance than the word drain (l). The definition above set out included all conduits not expressly coming within the definition of the particular terms "drains" or "highway drain." A sewer may exist before any drains are connected to it (m), and it has been held that the connection of two houses will make the whole of a line of pipes laid in a street for the use of all the houses legally a sewer (n).

Again, it was never necessary that a conduit should carry sewage matter before it might become a sewer or, for that matter, a drain (o). The conveyance of rain or surface water alone, provided that it came from different premises (see definition of "drain," *supra*) would make the conduit a sewer (p).

As a consequence of this, land drains were sewers within the meaning of sect. 4 of the P.H.A., 1875, though, as will be seen later, they did not vest in the sanitary authority being expressly excepted by sect. 13 of

(g) *Harris v. Scurfield* (1904), 68 J. P. 516; 91 L. T. 536; 41 Digest 3, 7.

(h) *Pilbrow v. St. Leonards, Shoreditch Vestry*, [1895] 1 Q. B. 33; affirmed, [1895] 1 Q. B. 433; 59 J. P. 68; 41 Digest 11, 80.

(i) *Duncan v. Fulham Vestry* (1899), *The Times*, February 11.

(k) *Beckenham U.D.C. v. Wood* (1896), 60 J. P. 490; 41 Digest 5, 24.

(l) *Per KNINNERSLEY, V.C.*, in *Sutton v. Norwich Corpn.* (1868), 22 J. P. 353; 27 L. J. (Ch.) 739; 41 Digest 3, 1.

(m) See the dictum of CAVE, J., in *Beckenham U.D.C. v. Wood*, *supra*.

(n) *Acton Local Board v. Batten* (1884), 28 Ch. D. 283; 49 J. P. 357; 41 Digest 5, 16.

(o) *Holland v. Lazarus* (1897), 66 L. J. (Q. B.) 285; 61 J. P. 262; 41 Digest 14, 98.

(p) *Per SMITH, L.J.*, in *Ferrand v. Hallas Land and Building Co.*, [1898] 2 Q. B. 135, at p. 144. *Silles v. Fulham Corpn.*, [1908] 1 K. B. 829; 67 J. P. 278; 41 Digest 21, 180, decided upon the definition of sewer in the Metropolis Management Act, 1855, is, *semble*, of general application.

the Act (*g*). So, too, a line of pipes from a highway drain taking drinking water for cattle in a near-by field (*r*) and a drain diverting land surface water from flowing into a quarry (*s*) were both held to be sewers; but both equally were held not to vest in the local sanitary authority by reason of being sewers for profit.

Generally, the *de facto* connection of drains from different premises with a conduit made that conduit a sewer as against the local authority; and also against the owner of the conduit unless the connection was a trespass and was not afterwards consented to by the landowners (*t*).

Open watercourses (*u*) and a tidal stream (*a*) have been held to be sewers. It has been decided, however, that the discharge of sewage into what was admittedly a natural stream at the passing of the Rivers Pollution Prevention Act, 1876, being an offence under that Act, could not convert the stream or channel into a sewer (*b*).

In a typical sewerage system before the P.H.A., 1936, the term sewer only applied to the conduits below the point of termination of a drain, i.e. below the point where the drainage of more than one building, not being premises in the same curtilage, is received (see *supra*).

Manholes in sewers were held to form part of the sewers, and one forming a side entrance to a sewer was held to be part of the sewer and not a work ancillary to the use of the sewer (*c*). Again under the Metropolis Management Act, 1855, the marsh wall or embankment through which passed the sewers draining the Isle of Dogs at low water was held to be a sewer (*d*).

So far as the ultimate receptacles of effluent passing through the conduits were concerned, however, generally these were not sewers (*e*). Thus a cesspool was not part of a sewer (*f*) nor *semble* the line of pipes conveying sewage into a cesspool (*g*). For as was said in one case, "A sewer within this Act of Parliament I conceive must be in some form a line of flow by which sewage or water of some kind should be taken from a point to a point and then discharged. It must have a *terminus a quo* and a *terminus ad quem*" (*h*).

Accordingly if a cesspool had a sewer leading out of it, in other words was not the ultimate receptacle but a mere catchpit, then it was a sewer (*i*). *A fortiori* the term sewer applied to the line of pipes

(*g*) *London & North Western Rail. Co. v. Runcorn R.D.C.*, [1898] 1 Ch. 561; 62 J. P. 648; 41 Digest 10, 74.

(*r*) *Croysdale v. Sunbury-on-Thames U.D.C.*, [1898] 2 Ch. 515; 62 J. P. 520; 41 Digest 10, 73.

(*s*) *Sykes v. Sowerby U.D.C.*, [1900] 1 Q. B. 584; 64 J. P. 340; 41 Digest 11, 76.

(*t*) *Pakenham v. Ticehurst R.D.C.* (1908), 67 J. P. 448; 2 L. G. R. 19; 41 Digest 9, 64.

(*u*) *Wheatcroft v. Matlock Local Board* (1885), 52 L. T. 356; 41 Digest 7, 46.

(*a*) *Newcastle-upon-Tyne Corp. v. Houseman* (1888), 68 J. P. 85; 41 Digest 8, 48.

(*b*) *George Legge & Son, Ltd. v. Wenlock Corp.*, [1938] A. C. 204; [1938] 1 All E. R. 37; Digest Supp.

(*c*) *Swanson v. Twickenham Local Board* (1879), 11 Ch. D. 888; 43 J. P. 380; 41 Digest 10, 66.

(*d*) *Poplar District Board of Works v. Knight* (1858), E. B. & E. 408; 22 J. P. 401; 41 Digest 18, 145.

(*e*) *Sutton v. Norwich Corp.* (1858), 22 J. P. 353; 27 L. J. (Ch.) 739; 41 Digest 8, 1.

(*f*) *Meader v. West Cowes Local Board*, [1892] 3 Ch. 18; 41 Digest 5, 19.

(*g*) *Butten v. Tottenham U.D.C.* (1898), 62 J. P. 428; 41 Digest 10, 67, and *Butt v. Snow* (1898), 67 J. P. 454; 89 L. T. 302; 41 Digest 9, 63.

(*h*) *BUCKLEY, J., in Pakenham v. Ticehurst R.D.C.*, *supra*.

(*i*) See *Pakenham v. Ticehurst R.D.C.*, *supra*.

leading to receptacles from which sewage was pumped mechanically and so discharged and to the receptacles themselves (*k*). But on the other hand, an engine house with pump machinery erected partly above and partly below the ground which forced sewage to a common outfall for treatment was held not to be a sewer but a work for the purpose of "receiving or otherwise disposing of sewage" (*l*).

It was doubtful how far the maxim "once a sewer always a sewer" was good in law (*m*). [365]

Vesting of Sewers.—Generally, all sewers immediately on coming into existence vested in the local authority under the P.H.A., 1875, sect. 13 (repealed). In this fact and consequent liability for maintenance which usually but not invariably followed on such (see "Single Private Drains," p. 202, *post*), lay both the origin and the importance of the distinction between a drain and a sewer.

The first part of sect. 13 read as follows :

"All existing and future sewers within the district of a local authority, together with all buildings, works, materials and things belonging thereto."

Except :

(1) Sewers made by any person for his own profit, or by any company for the profit of the shareholders ; and

(2) sewers made and used for the purpose of draining, preserving or improving lands under any local or private Act of Parliament or for the purpose of irrigating land ; and

(3) sewers under the authority of any commissioners of sewers appointed by the Crown shall vest in and be under the control of such local authority.

There were, therefore, vested in the local authority "sewers . . . together with all buildings, works, materials and things belonging thereto." The view generally taken was that by reason of their not being mentioned in this section, sewage disposal works did not automatically vest in the local authority, though some doubt was cast on this view by two recent decisions (*n*). In the latter of these cases it was held that the local authority had vested in them by virtue of sect. 13 both the pipes and disposal works constructed by a private owner with the consent of the authority, to which houses on a building estate were connected, subject to a payment to the owner of the works by the other owners of the houses. The P.H.A., 1936, clarifies the law in this particular (see *infra*). [366]

Sewers which did not Vest in the Local Authority.—Three types of sewers, *i.e.* conduits which came within the definition of sewers in sect. 4 and which were for all other legal purposes sewers, did not vest in the local authority.

(i.) Sewers made by any person for his own profit or by any company for the profit of the shareholders (*o*).

(*k*) *A.-G. v. Peacock*, [1926] Ch. 241; 90 J. P. 49; 41 Digest 6, 36. See also *dicta* of MAUGHAM, J., in *Clark v. Epsom R.D.C.*, [1929] 1 Ch. 287; 93 J. P. 67; Digest (Supp.).

(*l*) *King's College, Cambridge v. Uxbridge R.D.C.*, [1901] 2 Ch. 768; 41 Digest 10, 68.

(*m*) See Lumley, 11th ed., Vol. I., p. 55; notes to s. 20, P.H.A., 1936.

(*n*) *Clark v. Epsom R.D.C.*, *supra*; *Solihull R.D.C. v. Ford* (1931), 30 L. G. R. 483; Digest (Supp.).

(*o*) Reference should also be made generally to the notes to sect. 20 in Lumley, 11th ed., Vol. I., at pp. 61—68. And see the title SEWERAGE AUTHORITIES.

The decided cases establish clearly that the question whether a sewer was or was not a sewer for profit was one of fact. The term was described in one case (*p*) in the following terms :

"A sewer made for profit means in my opinion not a sewer made for the mere purpose of drainage, not a sewer made for the mere purpose of discharging matter not in any way to be utilised, but which it was essential to get rid of for commercial purposes, but a sewer made for the purpose of realising a profit above and beyond and independent of any sanitary purpose. Such, for instance, as a sewer made to collect feculent matter with a view to utilising it for manure or one made for the purpose of carrying away surface or other water and using it for irrigation."

And in a more recent case it was said (*q*) :

"In the present case the right to construct the necessary sewers was sold to a company having an entirely separate entity. The object of the company in purchasing the rights must necessarily have been to turn these rights to account and make a profit from so doing. So far as that company is concerned, in my judgment the only possible answer to the question 'Were the sewers made for profit ?' is in the affirmative."

Finally, it should be noted in regard to the use of the word "profit" that it is not restricted to direct monetary payment.

Applying these principles the courts have held, in decisions which the Local Government and Public Health Consolidation Committee in their second interim report rightly say are not easy to reconcile, that the following were sewers made for profit :

Sewers in a system of sewerage constructed with the consent of the local authority by a lord of the manor, who was owner of a large part of a town, at his own expense and in return for the use of which occupiers of houses paid a voluntary sewerage rate (circumstances which were referred to as exceptional in the *Solihull R.D.C. Case* (*r*) by MCKINNON, J.).

A line of pipes laid from a ditch near a highway to a gravel pit by the owner of a field and used for supplying water to cattle.

A drain laid for the purpose of collecting surface water from land and preventing it running over a quarry, thereby tending to the more economical and convenient working of the same.

And finally, in 1934 (*q*) sewers constructed on a building estate by a company who had purchased the right to construct the necessary sewers and charged owners wishing to use them the cost of connection by means of an annual rate.

On the other hand, the following have been held not to be sewers for profit :

A sewer made by the owner of some of the houses in a private street.

A line of pipes and successive cesspools constructed by a builder building along a street.

(*p*) *Per LOPES, L.J., in Ferrand v. Hallas Land and Building Co.*, [1898] 2 Q. B. 135; 57 J. P. 692; 41 Digest 17, 126.

(*q*) *Per Luxmoore, J., in Southstrand Estate Development Co., Ltd. v. East Preston R.D.C.*, [1934] Ch. 254; 97 J. P. 171; Digest (Supp.).

(*r*) *Solihull R.D.C. v. Ford* (1931), 80 L. G. R. 483; Digest (Supp.).

A sewer constructed by building estate developers in the side owned by them of a roadway bounding their estate and for the right of connection to which purchasers who took at a fee farm rent were obliged by their agreements to make a payment to the developers.

And finally, too, in 1931, a pipe and a sewage disposal works constructed by a property owner developing land for building with the consent of the local authority and with which houses were connected by arrangements providing for payments to himself by the owner of the latter houses.

It will be observed later that sewers for profit are not expressly mentioned in the P.H.A., 1936, but their classification is still of the greatest importance by reason of the fact that sewers for profit constructed before October 1, 1937, still do not vest in the local authority as public sewers.

(ii.) Sewers made and used for the purpose of draining, preserving or improving land under any local or private Act of Parliament or for the purpose of irrigating land.

This exception is not confined to sewers of this type constructed and used under local or private Acts of Parliament; while a proper land drainage sewer does not cease to be such legally because it receives drainage from houses (s). See title LAND DRAINAGE. [367]

(iii.) Sewers under the authority of any commissioners of sewers appointed by the Crown.

Effect of Vesting.—Sewers which vested in local authorities, in pursuance of sect. 18, became wholly the concern of the local authority. A right of ownership, though modified and limited in certain respects, in the sewers, including the space occupied thereby, passed to the local authority as from the date of vesting. The local authority were responsible for the maintenance and repair of such so as to ensure their proper functioning while they might be liable too in respect of nuisances or pollution arising therefrom. Liability for cleansing might, however, remain with the owner by agreement between him and the local authority (t). [368]

Single Private Drains.—These, and combined drains (see *infra*), were so to speak a hybrid type of conduit, partaking of the nature partly of a sewer and partly of a drain.

Single private drains owed their origin to one of two sources, either sect. 19 of the P.H.A. Amendment Act, 1890 (u) or to a local Act. The purpose of such enactments was to relieve local authorities of the obligation to repair what were virtually drains which would have arisen by reason of the additional connection of the drainage of another house thereto. Their ultimate effect, however, was to create this new type of conduit.

Sect. 19 of the Act of 1890, which by reason of its inclusion in Part III. of the Act was an "adoptive" section, was only in force (a) where the authority, urban or rural (so far as they could so do) adopted

(s) *R. v. Godmanchester Local Board* (1886), L. R. 1 Q. B. 828; 30 J. P. 164; 41 Digest 18, 138; *London & North Western Rail. Co. v. Runcorn R.D.C.*, [1898] 1 Ch. 561; 62 J. P. 643; 41 Digest 10, 74.

(t) *See Butt v. Snow* (1903), 67 J. P. 454; 89 L. T. 302.

(u) 18 Halsbury's Statutes 881 (repealed).

Part III. of the Act, or (b) where, so far only as rural authorities were concerned, an order of the Local Government Board or Minister of Health has been made applying the section to their district.

Sect. 19 (1) provided :

"Where two or more houses belong to different owners are connected with a public sewer by a single private drain, an application may be made under sect. 41 of the P.H.A., 1875 (relating to complaints as to nuisances from drains) and the local authority may recover any expenses incurred by them in executing any works under the powers conferred on them by that section from the owners of the houses in such shares and proportions as shall be settled by their surveyor or (in the case of dispute) by a court of summary jurisdiction."

The committee, in their second interim report, state :

"It appears from these decisions (a) that sect. 19 is defective in at least two respects (1) because it is limited to drains from houses 'belonging to different owners,' and (2) because under the judgment of the House of Lords in the *Wood Green Case* as interpreted by LAWRENCE and GREER, L.J.J., in the *Aldershot Case*, the section applies only if the authority can establish that the combined drain was originally constructed by reason of a requirement of the local authority made under sect. 23 or 25 of the Act of 1875."

The two last-mentioned sections dealt with the powers of a local authority to enforce drainage of undrained houses. The *Wood Green* and *Aldershot Cases* both dealt with single private drains within the meaning of sect. 19 of the 1890 Act. The same principle, however, applied also to combined drains (see p. 204, *post*).

Certain larger mainly municipal authorities, however, included in their private legislation a section replacing sect. 19 by another which sometimes removed these defects. A typical section provided as follows :

"Where two or more houses or premises are connected with a single private drain which conveys their drainage into a public sewer the (local authority) shall have all the powers conferred by sect. 41 of the P.H.A., 1875, and the (local authority) may recover any expenses incurred by them in executing any works under the powers conferred on them by that section from the owners of the houses in such proportions as shall be settled by the surveyor or (in case of dispute) by arbitration under the P.H.A., 1875, or by a court of summary jurisdiction, and such expenses shall be recoverable summarily as a civil debt or the (local authority) may declare them to be private improvement expenses and may recover them accordingly" (b). The section concluded by extending the meaning of the expression "drains" for the purposes of the section so as to include sewers.

(a) *Wood Green U.D.C. v. Joseph*, [1908] A. C. 419; *Hill v. Aldershot Corpn.*, [1908] 1 K. B. 259.

(b) Newport Corporation Act, 1906, s. 10, and see the similar section discussed in *Kingston-upon-Hull Corpn. v. North Eastern Rail. Co.*, [1916] 1 Ch. 81; 80 J. P. 52; 41 Digest 4, 15. In this case it appeared that the drain was constructed by reason of a requirement of the local authority.

The omission of the phrase "belonging to different owners" will be noted.

The inclusion of the words "or premises" enabled the local authority to treat a conduit as a single private drain in spite of the fact that surface water from the roadway flowed into the conduit, for the roadway adjacent to the building, up to the centre line thereof, was legally part of the premises of the house (c).

Single private drains were sewers, legally speaking, for all purposes except the limited ones of the remedying of defects therein in the event of the occurrence of nuisances or the like (d). When such arose, the local authority enjoyed similar rights in regard to recovery from the owners of the premises served by the single private drain to those they enjoyed under sect. 41 of the P.H.A., 1875, in respect of drains properly so called. The importance of the correct ascertainment of a former single private drain now lies in the fact that under the P.H.A., 1936, these automatically become public sewers, but the rights of the local authority to recover the cost of repairs thereto are preserved by sect. 24 of the Act (see *infra*). It would appear that they now vest in the local authority by virtue of the fact that they were strictly sewers and therefore sect. 20 (1) of the new Act applies and not for the reason (as has been suggested elsewhere) that they are combined drains and therefore subject to sect. 20 (1) (a) of the new Act. The P.H.A., 1936, now makes it impossible to have any single private drains after the commencement of the Act. Sect. 24 (5) thereof repeals any existing local legislation having such object. [369]

Combined Drains.—This type of conduit is often confused with the single private drains, *supra*, and unfortunately in many instances the terms have been used indiscriminately to apply to one or other of those types of conduits. It is suggested, however, that there are real differences and that this should be dealt with as a distinct type.

Combined drains, in the sense here applied to the phrase, owed their origin generally to a provision in a local Act which empowered the local authority to require the construction of a combined drain, the cost of installation and of repair being borne by the owners of the premises drained in such proportions as the local authority might fix. A typical local Act section would be in the following terms :

(1) "If it appears to the council that two or more houses may be drained more economically or advantageously in combination than separately and a sewer of a sufficient size already exists or is about to be constructed within 100 feet of any part of such houses, the council may, when the drains of such houses are first laid, order that such houses be drained by a combined drain to be constructed either by the council if they so decide, or by the owners, in such manner as the council may direct, and the cost and expenses of such combined drain and of the repairs and maintenance thereof shall be apportioned between the owners of such houses in such manner as the council shall determine, and if such drain is constructed by the council such costs and expenses may be recovered by the council from such owners.

(c) *Kingston-upon-Hull Corpn. v. North Eastern Rail. Co.*, [1916] 1 Ch. 31; 80 J. P. 52; 41 Digest 4, 45.

(d) *R. v. Hastings Corpn.*, [1897] 1 Q. B. 46; 60 J. P. 759; 41 Digest 39, 291; *Pemsel and Wilson v. Tucker*, [1907] 2 Ch. 191; 71 J. P. 547; 41 Digest 16, 121.

(2) "Any combined drain constructed in pursuance of this section shall for the purposes of the P.H.A. be deemed to be a drain and not a sewer.

(3) "Provided that the council shall not exercise the powers conferred by this section in respect of any house, plans for the drainage of which shall have been previously approved by the council."

Some local Acts went to the extent of giving similar powers even after plans had already been approved.

The important distinction between combined drains and single private drains lay in the fact that the former were still legally speaking drains in spite of the fact that they served more than one building while the latter, as has been seen, were legally sewers.

The creation of combined drains as such in the future is now rendered impossible outside London by sect. 38 (4) of the P.H.A., 1936, but as will be seen later the same section provides for the creation, in the form of a private sewer, of a conduit substantially similar to the former combined drain. [370]

Sewage Disposal Works.—These were not expressly mentioned in sect. 13 of the P.H.A., 1875. Therefore the view was taken that they did not *ipso facto* vest in the local authority. In certain recent decisions (e), however, a contrary view was taken. In the first of these, MAUGHAM, J., held, *obiter*, that sect. 13 of the P.H.A., 1875, applied to and therefore vested in the local authority a line of pipes, septic tank, filter and outfall.

Sect. 20, P.H.A., 1936, provides that all sewers within the meaning of the P.H.A., 1875, and sewage disposal works which by virtue of the provisions of that Act were immediately before the commencement of the 1936 Act vested in a local authority shall continue to be vested in them as public sewers. [371]

CLASSIFICATION AFTER P.H.A., 1936

As long ago as 1896, Lord RUSSELL, C.J., referred to existing legislation relating to sewers and drains—and in particular to single private drains and combined drains—as "entirely unsystematic and most confused, and in the public interest steps ought to be speedily taken to reduce the existing chaos into system and order" (f).

The P.H.A., 1936, endeavours so to do, so far as sewers and works constructed after its commencement (October 1, 1937). The idea behind the new scheme was described by the committee in this way :

" Apart, however, from these considerations we feel clear that tinkering with the language of sect. 19 (Act 1890) will provide no real solution of the problem, and that the time has arrived for abandoning the principle, which experience has shown to be unsound, that the responsibility for maintaining a particular pipe should depend solely on the question whether the pipe serves one or more than one building. Moreover, we are satisfied that it is not practicable to lay down a hard and fast line in an Act of Parliament, and to throw the responsibility for maintenance on the ratepayers

(e) *Clark v. Epsom R.D.C.*, [1929] 1 Ch. 287; 93 J. P. 67; Digest (Supp.); *Solihull v. Ford* (1931), 30 L. G. R. 483; Digest (Supp.).

(f) *Bradford v. Eastbourne Corp.*, [1896] 2 Q. B., at p. 213.

as a whole, or to leave it with individual developers or owners, according as the pipe in question falls on one side of that line or the other. In our view the circumstances vary within such wide limits that Parliament cannot hope to do more than leave to some competent authority the duty of deciding whether or not in a particular case the responsibility for maintenance should be transferred to the local authority and indicate in the Act the kind of considerations to which that authority ought to have regard in arriving at a decision" (g).

The distinction between a drain, *i.e.* a pipe serving one building only and a sewer is maintained. Sewers constructed after October 1, 1937, do not automatically vest in the local authority. They only do so when the local authority has expressly made a declaration vesting such in themselves as "public sewers." Sewers already constructed on October 1, 1937, and vested in the local authority remain so vested and become public sewers. Single private drains and combined drains constructed before October 1, 1937, also vest in the local authority as public sewers, but the Act maintains the *status quo* in respect thereof by enabling the local authority still to recover the cost of maintenance of such.

The future construction of single private drains and combined drains is made impossible by the repeal of sect. 19 of the Act of 1890 and all kindred local Act provisions (h). Parliament, however, apparently still was attached to the idea of a sewer for which private owners should be responsible and introduced a section into the 1936 Act providing for a new species of conduit, the "private sewer."

The number of the species of drainage conduits has thus been increased by the P.H.A., 1936. Conduits constructed before its commencement must still be classified as above, and then the relevant provisions of the new Act have to be applied to them. Those constructed after such commencement must be classified entirely by reference to the new Act.

At the risk of some repetition, therefore, it may be as well to essay a complete legal classification of all drainage conduits and works for sanitary purposes including those constructed before and those constructed after the Act.

Any conduits or works nowadays may be one or other of the following types : [372]

Drains. (a) *Constructed before October 1, 1937.*—The remarks made above regarding such still apply (i).

(b) *Constructed after September 30, 1937.*—A drain is now defined as meaning "a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage" (j).

The phrase "buildings or yards appurtenant to the buildings" is used in place of the words "lands" and "premises" which was found in the old definition (k); while the concluding restrictive words in the latter, limiting the term "drain" to one made for the purpose of communicating with a cesspool or like receptacle or sewer, are removed.

(g) Local Government and Public Health Consolidation Committee, Second Interim Report, pp. 28-29.

(h) P.H.A., 1936, ss. 24 (5), 38 (4); 29 Halsbury's Statutes 848, 854.

(i) See *ante*, p. 197.

(j) P.H.A., 1936, s. 348; 29 Halsbury's Statutes 589.

(k) P.H.A., 1875, s. 4; 13 Halsbury's Statutes 625.

Otherwise the new definition in using the word "building" or "buildings within the same curtilage" is identical with the old definition, and the comments on the character and legal consequences of a drain *supra* (l) apply to drains constructed after October 1, 1937. [378]

Defective Drains.—The local authority has the right to examine, test, and if necessary open the ground to do so, any drain which appears to be in such a condition as to be prejudicial to health, a nuisance or, in cases where the drain connects with a public sewer (see *infra*), is so defective as to admit subsoil water. The same power extends to private sewers, cesspools and sanitary conveniences (m). [374]

Sewers. (a) *Constructed before October 1, 1937.*—The definition of these—which was in the widest possible terms—is set out above (n). It included every type of conduit which was not a drain (except conduits used for road drainage, *i.e.* highway drains), even sewers made for profit, land drainage conduits and sewers under the authority of commissioners of sewers. Generally, the legal status of the three last-mentioned types of sewers has not been altered by the new Act.

Sewers which automatically vested in the local authority (o), *i.e.* all sewers within the definition, except these three last-mentioned types, now automatically become "public sewers" (see p. 208, *post*). In regard to these, the principles and legal decisions above set out (p) will still apply after October 1, 1937.

(b) *Constructed after September 30, 1937.*—The new definition of sewer in the P.H.A., 1936, is far more restricted than the old, and is as follows: "sewer" does not include a drain as defined in this section but, save as aforesaid, includes all sewers and drains used for the drainage of buildings and yards appurtenant to buildings (q).

This definition limits the term "sewer," so far as post 1937 conduits are concerned, to those used for the drainage of "buildings and yards appurtenant to buildings," in the same way as the term "drains" is now limited. This excludes land drainage conduits and conduits under the authority of commissioners of sewers, while those constructed for road drainage now can never be sewers (apart from the possibility of discharge of drainage from buildings into such) and certainly never the responsibility of the local authority as the public health authority.

Sewers constructed for profit after 1937 become "sewers," provided the other conditions of the definition are satisfied.

Sewers constructed after 1937 *per se*, however, do not now vest in the local authority and the term tends, therefore, to have lost a good deal of its importance and significance. Apparently they continue to vest in and be the responsibility of the persons who constructed them or other the owners of the buildings they serve. At best the type is transitory, for generally the local authority will proceed to make declarations of vesting, after having regard to all the circumstances of the case (r), in respect of all completed conduits which may properly be

(l) See *ante*, p. 197.

(m) P.H.A., 1936, s. 48; 29 Halsbury's Statutes 362.

(n) See *ante*, p. 198.

(o) P.H.A., 1875, s. 13; 18 Halsbury's Statutes 631. See *ante*, p. 200.

(p) See *ante*, pp. 198—200.

(q) S. 343; 29 Halsbury's Statutes 539.

(r) P.H.A., 1936, s. 17 (4); 29 Halsbury's Statutes 336.

said to be sewers. In this way the conduit will be converted, legally speaking, from a "sewer" to a "public sewer" (see *infra*). [375]

Public Sewers.—The definition section of the P.H.A., 1936, sect. 343, gives the meaning assigned to them in sect. 20.

The latter provides that certain conduits and works constructed before the Act, certain conduits and works constructed after the Act and certain conduits and works constructed at any time shall continue to be or become, as the case may be, vested in the local authority and be known as "public sewers."

(a) *Sewers or Sewage Disposal Works Constructed before October 1, 1937.*—Of these the conduits and works which became public sewers automatically on October 1, 1937, are :

- (i.) Sewers and Sewage Disposal Works which under the P.H.A., 1875, were vested in the local authority immediately before October 1, 1937 (*s*).
- (ii.) All combined drains constructed before October 1, 1937, which, by virtue of the provisions of the P.H.A., 1875, would immediately before that date have been vested in the local authority as sewers but for the provisions of some enactment or statutory scheme relating to the construction of combined drains, or of an order made under such enactment or scheme (*t*).

The new Act, however, partly preserves the *status quo*, both as regards single private drains, which were technically sewers (*u*) under the old law, and combined drains. Sect. 24 of the P.H.A., 1936, applies to both such types of conduits and empowers the local authority to recover the expenses of maintenance from the owners for the time being of the premises served by such conduits in such proportions as the local authority deem it fit to fix, regard being had to all the circumstances of the case, including the benefit to each owner, the distance for which the conduit is laid in land belonging to each owner, the point at which the work was necessary and the responsibility for any act or default which entails such work. The section defines maintenance in the widest possible terms ; and it enables owners to make representations to the local authority, and protects their rights in the event of the local authority enlarging the conduit. Any question as to the conduits to which the section applies, the necessity of the work and the reasonableness of the charge, including the fairness of the apportionment, can be decided by a court of summary jurisdiction. [376]

(b) *Sewers and Works Constructed at any Time.*—The following become public sewers :

- (i.) All sewers and sewage disposal works constructed by the local authority at their expense or acquired by them (*a*). In this connection the proviso to sect. 20 (2) should be observed. This provides that a sewer constructed by a local authority after October 1, 1937, for the purpose only of draining

(*s*) See *ante*, pp. 198—200.

(*t*) P.H.A., 1936, s. 20 (1) (*a*) ; 29 Halsbury's Statutes 342.

(*u*) See *ante*, pp. 202—204.

(*a*) P.H.A., 1936, s. 20 (1) (*b*) ; 29 Halsbury's Statutes 341.

property belonging to them shall not be deemed to be a public sewer for the purposes of the Act until it has been declared to be a public sewer. This was intended to cover the case of a local authority having its own housing estate, the sewers in which are made and owned by the authority *qua* housing authority.

(ii.) All sewers constructed under any¹ enactment relating to the sewerage of private streets to the satisfaction of the council carrying that enactment into execution except any such sewer which by virtue of the L.G.A., 1929, sect. 29, will vest in the county council (b). [377]

(c) *Sewers or Sewage Disposal Works Constructed after September 30, 1937.*—These only become public sewers after a declaration of vesting has been made in respect thereof and such declaration has taken effect (c). The principle adopted by the Act in respect of sewers is akin to, and in fact based upon, the principle previously found in English law in regard to highways. Sewers or highways may be in existence, but generally they will only vest in and become the responsibility of and repairable by the local authority after certain measures have been taken in regard thereto.

Sect. 17 (1) of the P.H.A., 1936 (d), provides “subject to the provisions of this section a local authority may at any time declare that any sewer or sewage disposal works situate within their district, or serving their district, or any part of their district being a sewer or works the construction of which was not completed before the commencement of this Act shall, as from such date as may be specified in the declaration, become vested in them. . . .”

Notices must be given by the local authority to the owners of the sewers or works and no action must be taken until either two months have elapsed without any appeal or such an appeal has been determined (sect. 17 (1)).

In practice a local authority's proposal cannot be said to be made until the council of the authority as a whole has resolved, or confirmed the minutes of a committee so resolving, to make a declaration. Two months must elapse after notice of such has been served. Hence it is suggested that all resolutions providing for vesting declarations should be worded to take effect at a date not less than two months ahead.

The effect and extent of the vesting of sewers in a local authority is described in the observations of JESSEL, M.R., on the term “vesting” as used in a local Act. “This is not the case of a mere easement. The barrel of the sewer—that portion of the subsoil—vests in you [the local authority] under the 59th section of your Act” (e). “It was found under the old law, and it was sometimes held, that the sewer authorities (they were not called sewer authorities in those days), had only an easement, and it was found to be very inconvenient, and consequently in the modern Acts the property in the sewers has been vested in the sewer authorities. That is to say, that instead of allowing the subsoil to remain in the owner of the soil, subject to an easement or right of sewerage or drainage, the absolute property in the sewer (which means not merely the brick barrel, or whatever it may be, forming the sewer, but

(b) P.H.A., 1936, s. 20 (1) (c); 29 Halsbury's Statutes 341.

(c) *Ibid.*, s. 20 (1) (d); *ibid.*

(d) 29 Halsbury's Statutes 336.

(e) *Taylor v. Oldham Corpns.* (1876), 4 Ch. D. 395, at p. 402; 41 Digest 16, 116.

the whole interior of the sewer, that is, the whole of the space occupied by it) is now vested in the sewer authorities. And if the sewer is a large one, it amounts, in substance, for all useful purposes, to the whole of the subsoil, and that is absolutely vested in the corporation" (ee).

The ownership of the local authority, however, while it does constitute an interest in land within the meaning of the Lands Clauses Consolidation Act, 1845, sect. 68 (f), is of a modified and limited form (g).

The consequence of vesting so far as concerns the liability of the local authority for damage arising out of negligent construction remains to be decided by the courts so far as public sewers are concerned. In regard to pre-1936 sewers which vested in, but yet were not constructed by, the local authority, see the case of *Morris v. The Mynyddistwyn U.D.C.* (h).

Owners of sewers or sewage disposal works may apply to the local authority requesting them to make a vesting declaration with respect thereto (i).

Appeals may be made to the Minister of Health by owners against proposals to make vesting declarations within two months after the service of notice of such proposal and against refusal at any time after receipt of notice of refusal or, in the absence of such notice, after two months from the making of their application. Full powers are given to the M. of H. to allow or disallow the local authority's proposal to make any declaration which the local authority might have made with the same effect as the declaration of a local authority, to specify conditions, including conditions as to payment of compensation by the local authority, and to make them conditions precedent to his declaration taking effect. (k).

Local authorities and the Minister, in considering the making or refusing of declarations, must have regard to all the circumstances of the case and in particular to the following considerations :

- (a) whether the sewer or works in question is or are adapted to or required for any general system of sewerage or sewage disposal which the authority have provided, or propose to provide, for their district or any part thereof ;
- (b) whether the sewer is constructed under the highway, or under land reserved by a planning scheme for a street ;
- (c) the number of buildings which the sewer is intended to serve and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings ;
- (d) the method of construction and state of repair of the sewer or works ; and
- (e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him (l).

(ee) *Taylor v. Oldham Corpns.* (1876), 4 Ch. D. 395, at p. 411; 41 Digest 16, 116.
(f) 2 Halsbury's Statutes 1184.

(g) See *Birkenhead Corpns. v. London & North Western Rail. Co.* (1885), 15 Q. B. D. 572, at p. 578; 50 J. P. 84; 41 Digest 16, 119, and *A.-G. v. Dorking Union* (1882), 20 Ch. 595, at p. 604; 41 Digest 42, 308.

(h) [1917] 2 K. B. 209; 81 J. P. 261; Digest (Supp.).

(i) P.H.A., 1936, s. 17 (2); 29 Halsbury's Statutes 336.

(k) *Ibid.*, s. 17 (3); *ibid.*

(l) *Ibid.*, s. 17 (4); *ibid.*

Declarations are not to prejudice the existing rights of persons to use the sewer or any substituted sewer (*m*) ; and declarations (and applications therefor) may be made in respect of part only of a sewer (*n*).

Where the sewer or sewage disposal works in respect of which a declaration is proposed to be made is situated in or serves the district of another local authority a preliminary notice must also be given to that authority and their consent obtained, unless the Minister dispenses with such consent (*o*). After a declaration has been made notice must be given to the local authority in whose district the sewer or works are situate (*p*).

Declarations cannot be made except on the application of the authority concerned in respect of sewers or works vested in another local authority, council of a metropolitan borough, county council (including the L.C.C.), or joint sewerage board, or vested in a railway company or dock undertakers and situate in or on their land held or used for their undertaking. Such conduits or works therefore cannot become public sewers without such application (*q*).

By way of further implementing the powers of local authorities to make declarations of vesting in regard to sewers or sewage disposal works when they think fit, sect. 18 of the Act legalises agreements between a local authority and persons constructing sewers or sewage disposal works to make such declarations of vesting on the completion of the work or at some specified date or on the happening of some future event (*r*). Such agreements can even be made in respect of drains, but the declaration of vesting must be expressly postponed by the agreement until such time as the drain has become a sewer (*s*). Agreements cannot be made regarding sewers or drains or sewage disposal works in the district of another local authority or in a metropolitan borough without the consent of such authority or of the borough council unless the Minister dispenses with such consent (*t*). [378]

Private Sewers.—The Local Government and Public Health Consolidation Committee intended to abolish, so far as future conduits were concerned, the single private drain and also the combined drain, in the sense above described. All conduits were to be drains or sewers ; there were to be no hybrids, and of sewers only those in respect of which a declaration of vesting is made were to become public sewers. In Parliament, however, a section was introduced into the Act which is to a large extent based upon the old common form combined drain section in local Acts. This section, sect. 38, has therefore introduced a still further type of drainage conduit, viz. the private sewer. Only conduits constructed after September 30, 1937, can be private sewers.

To appreciate the circumstances under which a private sewer can come into existence, it is necessary to refer to sect. 37 of the Act which compels the local authority to reject the plans of any building or extension of a building deposited in accordance with the building bye-laws unless (apart from the cases where no drainage is necessary) the plans show that satisfactory provision will be made for the drainage

(*m*) P.H.A., 1936, s. 17 (5) ; 29 Halsbury's Statutes 337.

(*n*) *Ibid.*, s. 17 (6) ; *ibid.*

(*o*) *Ibid.*, s. 17 (7) ; *ibid.*

(*p*) *Ibid.*, s. 17 (8) ; *ibid.*

(*q*) *Ibid.*, s. 17 (9) ; *ibid.*

(*r*) *Ibid.*, s. 18 (1) ; *ibid.*

(*s*) *Ibid.*, s. 18 (2) ; *ibid.*, 340.

(*t*) *Ibid.*, s. 18 (3) ; *ibid.*

of the building. A proposed drain is not to be deemed satisfactory unless (*inter alia*) it will connect with a sewer or discharge into a cesspool or other place (u).

Sect. 38 then provides that where the local authority might have required separate drainage for each of two or more buildings into an existing sewer they may, when the drains are first laid, require combined drainage for the buildings to the sewer by means of a private sewer. They can so require, if they consider that the buildings could be so drained more economically or advantageously by such means. The private sewer may be required to be constructed by the owners of buildings in such manner as the local authority direct, or by the local authority themselves.

Generally, a private sewer can only be insisted upon when the plans for the drainage of the building are being considered; but if the owners concerned agree, the local authority may exercise their powers after the plans have been passed (a).

The cost of constructing, maintaining and repairing private sewers is to be apportioned as between the owners concerned (or in certain cases as between the owners *inter se* and the local authority) by the local authority; and against their determination an appeal lies to a court of summary jurisdiction (b).

The construction of, or contribution to the cost of, a private sewer by a local authority under the section does not have the effect of making it a public sewer (c).

Finally, so much of any local Act as empowered a local authority to require the construction of a combined drain is repealed (d). [379]

Sewage Disposal Works.—The committee preceding the 1936 Act stated that "It seems to us that whatever the intention of the earlier Act may have been there is no ground in principle for distinguishing as regards works constructed in the future, between sewers and sewage disposal works and we recommend that they should be treated on the same footing." This, the P.H.A., 1936, has done. Sewage disposal works which, by virtue of the P.H.A., 1875, were vested in the local authority immediately before the commencement of the new Act, those constructed by a local authority at their expense or acquired by them, and all sewage disposal works with respect to which a declaration of vesting has been made under the Act, now vest in the local authority (e).

The procedure for making declarations of vesting in respect of sewage disposal works and the considerations to which the local authority must have regard are contained in sect. 1 (f). In practice, the large majority of sewage disposal works have been constructed by a local authority or combination of local authorities (see title SEWERAGE AUTHORITY) and therefore already vest in them. Similarly future works will generally vest in the local authority by reason of such construction by the authority without the necessity of any vesting declaration (g). [380]

(u) See *post*, p. 217.

(a) P.H.A., 1936, s. 38 (1); 29 Halsbury's Statutes 354.

(b) *Ibid.*, s. 38 (2); *ibid.*

(c) *Ibid.*, s. 38 (3); *ibid.*

(d) *Ibid.*, s. 38 (4); *ibid.*

(e) *Ibid.*, s. 20; 29 Halsbury's Statutes 341.

(f) *Ibid.*, s. 17, *ante*, at pp. 214—215.

(g) *Ibid.*, s. 20 (1) (c); 29 Halsbury's Statutes 341.

Cesspools.—Generally the P.H.A., 1936, has not altered the legal position in regard to these.

Cesspools are defined by sect. 90 (i.) as including “ a settlement tank or other tank for the reception or disposal of foul matter from buildings.” The term is now limited to receptacles for foul matter and hence cannot cover receptacles for surface water including water from roofs and yards. The word tank is now included in the definition so as to prevent any doubt whether tanks forming part of a private sewerage system were cesspools within the meaning of the Act.

Building and sanitation bye-laws which may (and if the Minister so requires, must) be made by every local authority can (*inter alia*) regulate “ cesspool and other means for the reception or disposal of foul matter in connection with buildings ” (h). The cleansing of cesspools is one of the services to be undertaken by the local authority (i.). Where a cesspool in use is insufficient, or, whether in use or not, is prejudicial to health or a nuisance, a local authority can by notice compel the owner to renew, clean, repair, fill up, remove or otherwise render the same innocuous (k).

The local authority can require owners of overflowing or leaking cesspools by notice to execute such works or take such steps as may be necessary to prevent their overflowing or leaking (l).

Neither cesspools, nor, it seems, the pipes running into cesspools, are sewers or parts of sewers (m). [381]

RATES AND INCOME TAX ON SEWERS

Generally, where a public body have a duty to perform which entails the occupation of land, then their occupation of a particular piece for the performance of that duty is “ valuable ” and they must be deemed to be hypothetical tenants thereof. This would apply to sewers and the House of Lords have decided (n) that sewers whether above or below ground are rateable whenever the occupation of them is “ valuable.”

Income tax is not chargeable in respect of a sewer vested in a local authority, but this exemption does not extend to any rent or annual payment by the local authority in respect of the sewer (o). Sewer in this connection means a sewer maintained by a local authority in pursuance of their statutory duties in relation to public health, but does not include a sewage disposal works (p). “ Local authority ” extends to all public bodies having power under public health enactments to construct and maintain sewers. [382]

RIGHTS AND DUTIES OF OWNERS AND OCCUPIERS OF PREMISES IN REGARD TO SEWERS

(a) **Rights.**—Sect. 34 of the P.H.A., 1936, confers a general right on owners and occupiers of any premises and owners of private sewers

(h) P.H.A., 1936, s. 61 (1) (ii.) (d); 29 Halsbury's Statutes 372.

(i) *Ibid.*, s. 72 (1); *ibid.*, 382.

(k) *Ibid.*, s. 39 (1); *ibid.*, 355.

(l) *Ibid.*, s. 50; *ibid.*, 362, and for the care of closets, earth and water, and sanitary conveniences, see *ibid.*, ss. 51, 52.

(m) *Sutton v. Norwich Corp.* (1858), 22 J. P. 353; 27 L. J. (Ch.) 739; 41 Digest 3, 1; *Button v. Tottenham U.D.C.* (1898), 62 J. P. 423; 41 Digest 10, 67.

(n) *West Kent Main Sewerage Board v. Dartford Union Assessment Committee*. [1911] A. C. 171; 75 J. P. 305; 38 Digest 440, 112.

(o) Finance Act, 1921, s. 34; 9 Halsbury's Statutes 632.

(p) *Inland Revenue Commissioners v. Renfrewshire County Council* (1925), S. C.

in the district of a local authority to connect their drains or sewers with the local authority's public sewers and to discharge foul or surface water thereinto. The exceptions in respect of prohibited matters and foul and surface water where a dual system exists are noted later (*q*).

By way of implementing these powers the owner or occupier is given a right to break open streets (*r*). Certain notices must be given to the local authority before the powers are exercised ; the local authority are given twenty-one days in which to refuse to permit the communication on the ground that it would prejudice their sewerage system and disputes between them and the owners or occupiers may on the latter's application be referred to a court of summary jurisdiction (*s*).

A more limited right of user of public sewers is conferred by sect. 35 on owners and occupiers of premises and owners of private sewers outside the district of the local authority. Here the local authority can refuse permission to connect except upon such reasonable terms and conditions, including payment, as they think fit.

Sect. 36 gives the local authority in either of the above-mentioned circumstances the right to undertake the actual making of the communication with the public sewers. [383]

(b) **Duty to Use Sewers.**—Provision of adequate drainage, and hence in most cases proper connection with public sewers, is now made the condition precedent of the passing of building plans.

Local authorities may reject the plans of buildings deposited under building bye-laws unless either (1) the plan shows satisfactory provision will be made for drainage—and this includes the conveyance of both refuse and rainwater—of the buildings, or (2) in the particular case they consider that they may properly dispense with any provision for drainage (*t*). Questions arising between owners and the local authority may be referred on the former's application to a court of summary jurisdiction.

A drain is not to be deemed satisfactory except in one of three circumstances :

- (i.) the drain connects with a sewer, but this can only be insisted upon if the sewer is within 100 feet of the site (or if at a greater length the local authority undertake to bear the additional cost attributable to such greater distance), and is at a level which makes connection reasonably practicable, and, if not a public sewer, is a sewer which the owner is entitled to use, and the intervening land is land through which the owner is entitled to construct a drain (*u*) ; or
- (ii.) the drain discharges into a cesspool (*a*) ; or
- (iii.) the drain discharges into "some other place" which expression apparently implies some form of receptacle whether excavated or not (*a*).

With regard to existing buildings, if it appears to a local authority that satisfactory provision has not been and ought to be made for

(*q*) See *post*, pp. 245—248.

(*r*) P.H.A., 1886, s. 34 (2) ; 29 Halsbury's Statutes 350.

(*s*) *Ibid.*, s. 34 (3), (4); *ibid.*

(*t*) *Ibid.*, s. 37 ; 29 Halsbury's Statutes 352.

(*u*) *Ibid.*, s. 37 (3), (4); *ibid.*, 358.

(*a*) *Ibid.*, s. 37 (3) ; *ibid.*

drainage, or that any cesspool, private sewer, drain, pipe or appliance provided for the building is insufficient or prejudicial to health, or that any disused cesspool, private sewer or drain is prejudicial to health or a nuisance they may serve notices on the owners of the building—except statutory undertakers — requiring the remedying of the same (b). [384]

Sanitary Conveniences for Buildings.—Closet accommodation must be provided for buildings and must be shown on building plans submitted to the local authority under building bye-laws unless dispensed with (c). If existing buildings have insufficient closet accommodation or defective closets notices may be served on the owner requiring him to provide or repair such closets (d). Sanitary conveniences must be provided in work places (e). Where buildings have a sufficient water supply and a sewer is available, the local authority may by notice require the replacement of earth closets by water closets at the joint expense of the owner and themselves (f). Rooms immediately over closets (except earth closets or water closets), cesspools, middens, or ashpits must not be occupied as living, sleeping or workrooms (g). [385]

HIGHWAY DRAINS

Before the P.H.A., 1936.—Prior to this Act conduits conveying surface water could be sewers within the meaning of the P.H.A., 1875 (h). Hence pipes laid for conveying surface water from roads into a stream were held to be sewers (i).

Sect. 4 of the P.H.A., 1875, expressly excepted from the definition of sewer "drains vested in or under the control of any authority having the management of roads *and* not being a local authority under this Act," and it was held that when, in 1894, a district council (the local authority under the 1875 Act) took over highways from a highway board, a surface water conduit (which had also received sewage) vested in the latter did not automatically become a sewer (k).

Drains "belonging to" main roads, not retained by an urban authority, vested in the county council (l).

Sewers could be constructed in private streets by the appropriate highway authority at the cost of the frontagers under sect. 150 of the P.H.A., 1875, or the Private Street Works Act, 1892 (m). [386]

(b) P.H.A., 1936, s. 39 ; 29 Halsbury's Statutes 355.

(c) *Ibid.*, s. 43 ; *ibid.*, 358. See also notes thereon in Lumley, 11th ed., Vol. I, p. 188.

(d) *Ibid.*, ss. 44, 45 ; *ibid.*, 359.

(e) *Ibid.*, s. 46 ; *ibid.*, 360. This section only applies in urban districts or rural districts or contributory places in which the P.H.A. Amendment Act, 1890, s. 22, was in force immediately before the P.H.A., 1936. For Factories and Workshops, see now Factories Act, 1937 ; 30 Halsbury's Statutes 207.

(f) S. 47 ; 29 Halsbury's Statutes 361.

(g) P.H.A., 1936, s. 49 ; *ibid.*, 362.

(h) *Per Smith, L.J.*, in *Ferrand v. Hallas Land and Building Co.*, [1898] 2 Q. B. 185, 144 ; 57 J. P. 692 ; 41 Digest 47, 126.

(i) *Durant v. Branksome U.D.C.*, [1897] 2 Ch. 29 ; 61 J. P. 472 ; 41 Digest 21, 161.

(k) *Williamson v. Durham R.D.C.*, [1906] 2 K. B. 65 ; 70 J. P. 352 ; 41 Digest 7, 42.

(l) L.G.A., 1888, s. 11 (6) ; 10 Halsbury's Statutes 694 (repealed) ; L.G.A., 1929, s. 29 (2) ; 10 Halsbury's Statutes 908.

(m) 9 Halsbury's Statutes 198.

P.H.A., 1936.—Highway drains which were properly sewers and therefore vested in the local authority continue to be so vested as public sewers (*n*).

The definition of "sewer" in the P.H.A., 1936, *supra*, limits the term to sewers and drains used for the drainage of buildings and yards appurtenant to buildings. After the Act, therefore, pipes used for the drainage of a road are not even sewers within the meaning of the Act, much less public sewers. A conduit not originally constructed or used for drainage of buildings, if later connected with pipes draining buildings, might be a private sewer or even, if constructed by a local authority, a public sewer (*o*).

Public sewers also now include sewers constructed before or after the Act under the private street works enactments (*p*) except such as vest in the county council (*q*). The latter may be used by the local authority under the P.H.A., 1936, for the conveyance of surface water from premises or streets and their public sewers may be used by the county council for the conveyance of surface water from the latter's roads by agreement between the local authority and the county council (*q*). Existing rights of user of the county council's highway drains are preserved (*r*). [387]

LONDON

In the P.H. (London) Act, 1936, sect. 81 (*s*), the word "drain" means a drain used for the drainage of one building only or premises within the same curtilage, being a drain made merely for the purpose of communicating with a cesspool or other like receptacle for drainage or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed, and includes (1) a drain for draining any group or block of houses by a combined operation under an order of a borough council or their predecessors; and (2) a drain for draining a group or block of houses by a combined operation, being a drain laid or constructed before 1856 under order or sanction of the Metropolitan Commissioners of Sewers. A drain for draining any group or block of houses by a combined operation is not to be deemed to have become a sewer or to have ceased to be a drain by reason only of the drainage of other premises into the drain (*t*). Drains for draining a block of houses by a combined operation sanctioned by other commissioners of sewers which existed in London before the Metropolitan Commissioners of Sewers are not drains but sewers (*u*). Combined drains sanctioned by the commissioners before 1856 but not laid until after that date would also appear to be sewers. The order

(*n*) P.H.A., 1936, s. 20 (1); 29 Halsbury's Statutes 341. An example would occur where the highway authority and the local authority were the same authority, or, perhaps, where a local authority was using an existing highway drain for its own sanitary purposes.

(*o*) *Ibid.*, s. 20 (1) (b); *ibid.* See, generally, Lumley, 11th ed., Vol. I., p. 712, note (*o*).

(*p*) *Ibid.*, s. 20 (1) (c); 29 Halsbury's Statutes 341.

(*q*) *Ibid.*, s. 21; *ibid.*, 342. The sections make it necessary to obtain the consents of sewerage authorities in certain circumstances.

(*r*) *Ibid.*, s. 21 (4); *ibid.*, 343. See L.G.A., 1929, s. 29 (2); 10 Halsbury's Statutes 903.

(*s*) 30 Halsbury's Statutes 488.

(*t*) P.H. (London) Act, 1936, s. 81 (2); 30 Halsbury's Statutes 489.

(*u*) *Appleyard v. Lambeth Vestry* (1897), 66 L. J. (Q. B.) 347; 41 Digest 15, 111.

as to a combined operation need not be a formal order, and whether such order has been made or not is a question of fact. The signature of the chairman of a district board to a book showing that the plan was before the board and had been approved was held to be sufficient evidence of an order (a); so was the plan book of a vestry initialled by the surveyor showing the drain as having been laid satisfactorily (b). The fact that the owner had asked the vestry to make the drain followed by payment to the vestry of the estimated cost has been held sufficient evidence of an order (c). If the vestry has delegated its powers of approval to the surveyor, evidence of his approval is not sufficient (d), although he might sanction details (e). A strong presumption that it was made with the knowledge and sanction of the vestry is not alone sufficient (f).

The word "sewer" means a sewer or drain of any description except a drain as defined in the Act (g). Allowing for the differences between these definitions and those given in the P.H.A., 1936, the law as to the interpretation of the definitions is the same as is applicable outside London.

The City of London Sewers Acts, 1848 and 1851, contain no definition of sewers and drains; but a distinction is made between public and private sewers and drains as in the P.H.A., 1936.

For definition of "disused drain," see P.H. (London) Act, 1936, sect. 81 (h). For powers as to drainages of premises, see *ibid.*, sects. 37 to 45 (i). [388]

(a) *Bateman v. Poplar District Board of Works* (1886), 33 Ch. D. 360; 41 Digest 11, 82.

(b) *Geen v. St. Mary, Newington, Vestry*, [1898] 2 Q. B. 1; 41 Digest 14, 99; *Greater London Property Co., Ltd. v. Foot*, [1899] 1 Q. B. 972; 41 Digest 12, 85.

(c) *House Property and Investment Co. v. Grice* (1911), 75 J. P. 395; 41 Digest 12, 84; cf. *Cheetham v. Manchester Corp.* (1875), L. R. 10 C. P. 249; 38 Digest 188, 269.

(d) *High v. Billings* (1903), 67 J. P. 388; 41 Digest 15, 112.

(e) *Heaver v. Fulham Borough Council*, [1904] 2 K. B. 383; 41 Digest 12, 83.

(f) *St. Matthew, Bethnal Green, Vestry v. London School Board*, [1898] A. C. 190; 41 Digest 14, 100; see also as to proof *Stokes v. Haydon* (1901), 65 J. P. 756; 41 Digest 18, 91.

(g) P.H. (London) Act, 1936, s. 81; 30 Halsbury's Statutes 488.

(h) *Ibid.*

(i) 30 Halsbury's Statutes 464—470.

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SEWERS, CONSTRUCTION, MAINTENANCE, AND PROTECTION OF

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Introduction.—The provision of sewers is usually an essential corollary of the provision of a public water supply, but whereas the latter is almost invariably a revenue-earning service, the whole cost of the former is a charge upon public funds. Moreover, whilst a water supply may be provided by a public authority or by public utility undertakers operating for profit, the provision of sewers is a duty imposed upon some public body, usually the local authority.

The powers conferred upon local authorities by sect. 15, P.H.A., 1936, to construct sewers within their district, and by sect. 16 to construct sewers without their district are to enable them to carry out the duty of providing for the effectual drainage of their district, imposed upon them by sect. 14 of the Act (*a*).

Local authorities are given a large measure of control in regard to the construction of private sewers and drains and their connection to public sewers under sects. 19, 24 (2), 34, 35, 37, 38, 39, 41, 42 of the Act (*b*).

The design of a sewerage system demands much care and skill, and involves the consideration of many difficult problems in regard to the type of system which should be adopted having regard to local conditions such as population, present and probable future; rainfall; lay-out of lines of main sewers so that the greatest practicable proportion of sewage may flow to the disposal works by gravitation; liability for compensation and other matters. In constructing the sewers and other ancillary works, materials and workmanship should be of high quality and great care exercised to secure accuracy of line and level. In work of this kind it is difficult, and often impracticable, to remedy defects, which may become a permanent source of danger, trouble and expense. Where an application is made to the M. of H. for sanction to raise a loan for works of sewerage, certain rules laid down by the Ministry in

(*a*) 29 Halsbury's Statutes 334, 335, 333.

(*b*) *Ibid.*, 340 *et seq.*

regard to provision for rainfall, gradients, velocity of flow, and other matters must be observed. [389]

Duty of Local Authority to Provide Sewers.—Sect. 14, P.H.A., 1936, places upon local authorities the responsibility for providing and maintaining an effective system of sewers and works for the draining of their district.

This section, however, does not require a local authority to provide sewers in every part of their district, regardless of circumstances, as is sometimes assumed to be the meaning of the section.

This is clearly indicated by sects. 37 and 39 of the same Act, which provide that all new buildings and all existing buildings without satisfactory provision for drainage shall be effectively drained, but that in the event of there being no sewer available within 100 feet of the site of the house, the owner shall not be required to discharge his drains into a sewer, but the local authority shall require the drain to discharge into a cesspool or into some other place.

Again, the section does not require a local authority to provide sewers in anticipation of building development or to enable it to take place. Usually, however, a local authority is well advised to make provision in advance for the drainage of land, the development of which appears to be imminent. Their obligation to make such provision will arise in any event when actual development has reached a stage when a system of drainage has become necessary, and sect. 42, P.H.A., 1936, whilst it authorises a local authority to close any existing drain and fill up an existing cesspool which, although sufficient for the effectual drainage of the premises concerned, is not adapted to the general sewerage system of their district, requires them to do the work and provide equally convenient alternative means of drainage at their own expense, which may be an exceedingly costly matter where many cesspools exist. No such obligation was specifically imposed upon a local authority by the 1875 Act, but the provisions of sect. 42 of the 1936 Act do not appear substantially to have altered the legal position (c).

Moreover, cesspools may become objectionable, and usually require frequent cleansing, the cost of which would fall upon the local authority, if, as is usually the case, the authority has become responsible for the cleansing of cesspools under sect. 72, P.H.A., 1936. (d)

Further, sect. 150 of the 1875 Act (e) authorises a local authority to require the owners of premises abutting upon a street (not being a highway repairable by the inhabitants at large), which is not sewered to the satisfaction of the local authority, to provide a sufficient sewer (or in default the local authority may provide the sewer at the cost of the owners). See *post*, pp. 229, 232.

Similar powers are conferred by the Private Streets Works Act, 1892. See *post*, p. 229.

Where, however, a local authority exercises these powers, the authority must provide the outfall to receive the sewage from sewers constructed at the expense of the property owners (f). [390]

(c) *St. Marylebone Vestry v. Viret* (1865), 19 C. B. (N. S.) 424; 41 Digest 26, 202; *A.-G. v. Clerkenwell Vestry*, [1891] 3 Ch. 527; 41 Digest 42, 304; *St. Martin-in-the-Fields Vestry v. Ward*, [1897] 1 Q. B. 40; 61 J. P. 19, C. A.; 41 Digest 26, 204; *Molloy v. Gray* (1889), 24 L. R. I. 258.

(d) 29 Halsbury's Statutes, 382.

(e) 18 Halsbury's Statutes, 686.

(f) *R. v. Tynemouth R.D.C.*, [1896] 2 Q. B. 451; 60 J. P. 804, C. A.; 41 Digest 19, 147; *Kinson Pottery Co. v. Poole Corpns.*, [1899] 2 Q. B. 41, 49; 63 J. P. 580; 41 Digest 11, 75.

Liquid Trade Waste.—By the passing of the P.H. (Drainage of Trade Premises) Act, 1937, sect. 26 of the P.H.A., 1936, was repealed, and the operation of sects. 27 and 34 of that Act made subject to the provisions of the 1937 Act (*g*). Previous legislation conferred upon producers of a trade effluent the right to pass the effluent into a public foul water sewer, on condition that it would not prejudicially affect the sewers, or the treatment or disposal of the sewage, or give rise to danger or nuisance, or cause prejudice to health, or contain petroleum spirit or carbide of calcium, or cause overloading of the sewers or sewage disposal works.

The 1937 Act whilst conferring upon the owners and occupiers of trade premises the right, with the consent of the local authority of the district, and to a limited extent without such consent, to discharge trade effluent into public sewers, lays down conditions as to the giving of notice, and the furnishing of particulars of the effluent to the local authority ; the control of the rates of discharge ; the taking of samples of effluent ; the right of appeal to the Ministry ; and the making of bye-laws by a local authority in relation to the discharge of trade effluent into their sewers, which are quite new.

Sect. 2 prohibits the discharge of trade effluent from trade premises into a public sewer, except in accordance with a written notice served upon the local authority by the owner or occupier of the premises, giving particulars of the nature and composition of the effluent, the maximum proposed daily discharge, and the maximum proposed rate of discharge. The section provides for an interval of two months, or such less time as is agreed by the local authority, between the date of notice and commencement of discharge.

Where the consent of the local authority to the discharge is lawfully required, the notice is deemed to be an application for such consent.

Within the period of two months the local authority may give notice to the applicant that the discharge must not commence until a date specified, after the expiration of that period, and, so far as the discharge would not be lawful without their consent, the local authority may give their consent, either unconditionally or subject to such conditions as they think fit in relation to the sewer or sewers into which the effluent may be discharged ; the nature or composition of the effluent ; the maximum daily rate and maximum rate of discharge, and any other matter in respect of which bye-laws may be made under the Act, but all such conditions must be consistent with any bye-laws so made.

The local authority is required to send a copy of any trade effluent notice received by them to any interested body, and must not take action in relation to the notice without the approval of any such body.

The term "interested body" used in this section is defined in sect. 14 of the Act as meaning any body into whose sewer or sewage disposal works the trade effluent would be discharged from the sewers of the local authority, and the body having jurisdiction in respect of any harbour or tidal water receiving the said effluent directly or indirectly from any sewer or sewage disposal works of the local authority or into which the sewers of the local authority discharge.

There is no doubt that the obligation upon a local authority to give notice to any "interested body" of every proposed discharge of trade effluent into their sewers or works, or harbour or tidal water under their jurisdiction, in many cases, will impose upon the local authority a serious responsibility. Where sewage disposal works are concerned the body

(*g*) 30 Halsbury's Statutes 695 ; 29 Halsbury's Statutes 346, 347, 349.

responsible for their operation is interested in the quantity and rate of discharge and in any effluent the nature of which might render disposal more difficult or expensive, but relatively few trade effluents have this effect. Moreover, sect. 5 of the Act authorises the making of bye-laws requiring the elimination from the effluent, before its discharge into a public sewer, of any constituent likely to render treatment of the sewage specially difficult or expensive. The primary interest of a harbour or tidal water authority is the effect (if any) the effluent may have upon navigation and the use of the harbour or tidal water, and this, also, is taken care of by bye-laws.

It will be noted that, whilst a copy of every trade effluent notice must be sent to any "interested body," it is only where the consent of the local authority is required that the approval of the "interested body" is necessary.

Sect. 4 provides that where trade effluent was being lawfully discharged into a public sewer at any time during the year ending March 3, 1937, the owner or occupier of the premises concerned shall be entitled, without the consent of the local authority, to continue to discharge a similar effluent, so long as the maximum daily rate and maximum rate of discharge during the said period is not exceeded. Where such discharge had been subject to an agreement between the local authority and the owner or occupier of the premises concerned, the right of discharge may continue so long as terms of payment (if any) to the local authority, provided by the agreement, are observed by the owner or occupier. The restrictions imposed by sects. 1, 2 and 3 of the Act are to apply to the discharge of trade effluent which, under sect. 4, may be made without the consent of the local authority. A trade effluent produced solely in the course of laundering articles may be discharged into the sewer of a local authority without their consent for the purposes of the 1937 Act. Sect. 2 (5) makes it an offence to discharge any trade effluent in contravention of the section, or without any consent required by the Act, or in contravention of any direction or condition given or imposed under the section. Sect. 3 provides that any person aggrieved by a direction of, or refusal or failure to give consent within the initial period by, a local authority under sect. 2, may appeal to the Minister who may determine the matter in dispute, and his decision shall be deemed to be a decision duly given by the local authority under sect. 2. The right of appeal is not invalidated merely because failure to give consent arises from delay by an interested body to approve the giving of consent.

Apparently, although effluent which may be discharged into a sewer of a local authority without their consent is subject only to those bye-laws, made under sect. 4 of the Act, which regulate the temperature of the effluent and require the effluent, so far as practicable, to be neutral (neither acid nor alkaline), and the provision and maintenance of an inspection chamber, meters and other facilities for sampling and measuring the effluent, such effluent must have complied with the provisions of sects. 26 and 27 of the 1936 Act, otherwise they could not have been "lawfully discharged" into the sewers during the year ending March, 1937. In practice it will often be found difficult to determine the nature and composition of trade effluent discharged into a public sewer during the year ending March, 1937, as in many cases this will have varied substantially from time to time during that period, and it will be even more difficult to determine the maximum rate or maximum daily rate of flow during the period. In comparatively few cases are

accurate records of these matters kept by the persons responsible for the discharge, so that usually the nature and composition of the effluent must be assumed from analyses made after the expiration of the period, and possibly under different conditions. So far as rates of discharge are concerned the local authority generally would have no alternative but to accept estimates put forward by the producer.

Sub-sect. (5) of sect. 4 provides for the determination by the Minister of any dispute arising under the section, subject to the statement by him, in the form of a special case for the opinion of the High Court, of any question of law arising in the proceedings.

Sect. 5 provides that a local authority may, and if required by the Minister shall, make "trade effluent bye-laws" which may contain stipulations in regard to the periods of discharge; the exclusion of condensing water from trade effluents; the elimination from the effluent of matters deleterious or obstructive to the sewers into which it is discharged, or, where the effluent ultimately will be discharged into any harbour or tidal waters, obstructive to navigation on or the use of such harbour or tidal waters; the maximum daily quantity and rate of discharge of trade effluent which may take place without the consent of the authority; the temperature and neutral character of effluents at the time of their discharge; payments made under certain circumstances to a local authority by occupiers of trade premises in respect of the reception into sewers and the subsequent disposal of trade effluents, and the provision and maintenance of facilities for the taking of samples and measurement of the volume of effluent discharged.

Bye-laws in relation to the period or periods of the day during which the discharge of trade effluents may take place, and the quantity which may be discharged and the rate of discharge permitted without the consent of the local authority, may vary in relation to different descriptions of trade premises, and different parts of the district of the local authority. Those provisions only of bye-laws made under sect. 5 which relate to matters in sub-sect. (1) (e), (g) and (h), apply in respect of trade effluents which, under sect. 4, may be discharged into the sewers of a local authority without their consent, nor is a local authority entitled to make any charge for the reception of any effluent which lawfully may be so discharged.

No trade effluent bye-laws are of any effect until confirmed by the Minister. The occupier of any premises in respect of which any trade effluents bye-law is contravened, is guilty of an offence, but a local authority may, with the consent of the Minister, relax or dispense with the requirements of any bye-law in any particular case where they are of opinion that the operation of the bye-law would be unreasonable, subject to their giving notice of the proposed relaxation or dispensation to any interested bodies, to persons whose names are entered in the register to be kept by the authority under para. 2 of the Schedule to the Act, and to such other persons as the Minister may direct. The Minister shall not give his consent before the expiration of one month from the date of the notice, and before doing so shall have regard to any objections received by him. Trade effluents bye-laws shall not be in force for a period exceeding ten years unless such period is extended by order of the Minister.

The Minister is given power under sect. 6 of the Act to make trade effluents bye-laws where a local authority has failed to do so within six months from the date upon which they are required to do so by the Minister, and the Minister, if satisfied that existing trades effluents

bye-laws are unreasonably impeding the establishment or carrying on of any trade or industry within the district of a local authority, or are likely to do so, may require the authority to revoke such bye-laws and to make such other bye-laws as he considers necessary, and if the local authority fail to comply with such requisition the Minister himself may do so.

Sect. 7 authorises a local authority, subject to the approval of the Minister, to enter into an agreement with the owner or occupier of trade premises for the reception or the disposal of trade effluent from his premises subject to repayment to the local authority, by him, of the whole or part of expenses incurred by them in relation to such reception or disposal. A local authority may enter into, and carry into effect, an agreement with the owner or occupier of trade premises within their district for the removal and disposal of substances produced in the course of treating any trade effluent. A copy of all such agreements, certified by the clerk to the authority, must be kept in the office of the authority and be available for inspection and copying by any person on payment of a fee of sixpence.

Agreements entered into by a local authority with any owner or occupier in respect of any trade effluent before the commencement of the Act, or the coming into operation of any trade effluents bye-laws, shall not be affected by anything in the Act or the bye-laws.

The Minister may, upon the application of either party to an agreement made between two authorities before the passing of the Act in regard to the reception or disposal of sewage by one authority for the other authority, if he is satisfied that, owing to circumstances arising or likely to arise by reason of the operation of the Act, the agreement ought to be cancelled or varied, direct that the agreement be cancelled or varied in the manner specified by him.

Local authorities are authorised by sect. 8 to execute works for the purpose of compliance with the Act, on behalf and at the cost of the person responsible for the execution of the works, and may arrange for payment due in respect of the works to be made by instalments.

The owner or occupier of land containing any sewer, drain pipe, channel or outlet, used or intended to be used for discharging any trade effluent into any sewer of a local authority, is required by sect. 9 to produce to the local authority all plans in his possession or accessible to him without expense, and to furnish to the authority such information as he can reasonably be expected to supply in reference to the said means of discharge. Failure to comply with the requirements of this section renders the person in default liable to a fine of £5 and daily penalty of 40s.

Sect. 10 confers upon a local authority power to take samples of trade effluents and specifies the procedure to be followed. Any person committing an offence under the Act, in respect of which the Act provides no special penalty, is liable to a fine of £50, and to a daily penalty of £20.

The Minister is authorised by sect. 12, upon the application of any sewerage authority, or owner or occupier of premises within the district of a sewage authority, by order to make such amendments or adaptations in any local Act relating to the authority as appear to him to be necessary to bring the provisions of the local Act into conformity with the provisions of the 1987 Act. The section also provides for the transfer of functions exercised by a local authority under the 1987 Act to a joint sewerage authority, and sets out the procedure to be followed in regard

to the making of any order under sect. 12. Under sect. 13 the water rights in a river, stream or watercourse are protected from infringement.

Sect. 14 gives definitions of "district," "harbour," "tidal water" "interested body," "joint sewerage authority," "trade effluent," and "trade premises." "Trade effluent" includes any liquid which is wholly or partly produced in the course of any trade or industry but does not include domestic sewage.

The schedule attached to the Act contains provisions as to the making and publication of trade effluents bye-laws by a local authority. [391]

Power of Local Authority to make Sewers.—Sect. 15, P.H.A., 1936, confers upon local authorities power to lay sewers within their district "in, under or over any street, or under any cellar or vault below any street," and, after giving reasonable notice to the owner and occupier of the land, "in, on or over any land not forming part of a street." Subject to the provisions of sect. 16 of the Act, local authorities may exercise similar powers outside their districts, the procedure being similar to that provided by sect. 161, L.G.A., 1933, for compulsory acquisition of land.

Before a local authority proceeds to execute works in private land a survey of the property should be made with the owner or his representative, and existing conditions noted and agreed.

The definition of street in sect. 343 of the 1936 Act is similar to that contained in sect. 4, P.H.A., 1875, except that instead of including "any public bridge" (not being a county bridge) it includes only "a highway over any bridge." It appears likely that it may often be found difficult to determine how far the highway extends below its surface. The definition is very comprehensive, but is not intended to exclude the application of the popular, ordinary meaning of the word, where this is not contrary to the context or subject-matter (c). The definition in sect. 4, P.H.A., 1875, has been held to apply in regard to the use of the word "street" in sect. 16 (d) of that Act so that it may be assumed that the definition of "street" in sect. 343 of the 1936 Act will govern the use of that word in sect. 15 of that Act.

It will be observed that a report of the surveyor to the local authority is no longer necessary before notices are served upon owners and occupiers where it is proposed to construct a sewer on private property, but it is important that the conditions of sect. 15 in regard to the giving of notice should be strictly observed (e). It has been held, however, that an owner cannot obtain an injunction or damages on the ground only that such notice has not been given if the work has been done with his consent (f) or he had full knowledge of the proposals of the authority (g).

Whilst it has been held that a written notice containing a description

(c) *Robinson v. Barton Eccles Local Board* (1883), 8 App. Cas. 798; 48 J. P. 276, H. L.; 26 Digest 269, 86.

(d) *Taylor v. Oldham Corp.* (1876), 4 Ch. D. 395; 26 Digest 270, 96; *Hill v. Wallasey Local Board*, [1894] 1 Ch. 133, C. A.; 26 Digest 270, 97; *Maddock v. Wallasey Local Board* (1886), 55 L. J. (Q. B.) 267; 50 J. P. 404; 26 Digest 299, 301.

(e) *New River Co. v. Ware Union Rural Sanitary Authority* (1883), 18 L. J. (N. C.) 20; *Lewis v. Weston-super-Mare Local Board* (1888), 40 Ch. D. 55; 41 Digest 22, 168.

(f) *Long v. Fulham Vestry* (1898), 47 W. R. 56; 43 Digest 373, 18.

(g) *Hutchings v. Seaford U.D.C.* (1898), *Times*, November 11; (1899), *Times*, November 6; *Cleckheaton U.D.C. v. Frith* (1898), 62 J. P. 536; 41 Digest 35, 262; *Montgomerie & Co. v. Haddington Corp.*, [1908] A. C. 170; 41 Digest 80, r; *Scott v. Dunoon Magistrates* (1909), S. C. 1093.

of the proposed line and character of the sewer may be sufficient compliance with sect. 15 (*h*), it is desirable in all cases that the notice should be accompanied by a plan and section, indicating clearly the proposed position of the sewer.

A notice may be withdrawn at any time before the works have been commenced, but in that event the owner may possibly be able to recover compensation for any damage sustained by reason of the service of the notice upon him (*i*).

The definition of the word "sewer" in sect. 343, P.H.A., 1936, appears to be less comprehensive than the definition in sect. 4, P.H.A., 1875, in that the former includes "sewers and drains of every description, except drains" as defined, and mentioned in the section, whereas in sect. 343, whilst the term excludes "drains" used for the drainage of one or more buildings or yards within the same curtilage, it includes all other sewers and drains used for the drainage of buildings and yards appurtenant to buildings. It has been held that "sewer," as defined in the 1875 Act, includes works such as manholes which form part of the sewer (*j*), but not such works as pumping stations or other works for distributing, storing or treating sewage, which are covered by sect. 27 of the Act (*k*).

The power conferred upon a local authority to construct sewers and sewage disposal works by sect. 15 of the 1936 Act is limited to "public sewers" and "sewage disposal works," and appears to be somewhat narrower than the powers conferred by the 1875 Act.

For instance, it is often necessary to provide apparatus, frequently in a substantial structure, as part of the sewerage system, in the line of sewer, under the public highway, for the purpose of raising sewage to a higher level. This apparatus and structure is not a "sewer," nor is it used for sewage disposal, nor does it form any part of the "disposal works." The question arises whether the construction of such works is covered by the powers conferred by sects. 15 and 16 of the 1936 Act.

The terms "lands" and "premises" are defined in sect. 4, P.H.A., 1875, as including messuages, buildings, lands, easements and hereditaments of any tenure, and this has been held to include lands covered with water (*l*), whereas in sect. 343, P.H.A., 1936, a similar definition applies to "premises" only, and land is defined to include any interest in land or any easement or right to or over land.

Sect. 15 imposes upon a local authority the obligation, where they propose to lay a sewer, under the powers conferred upon them by this section, which would cross or interfere with any watercourse or works vested in, or under the control of a land drainage authority, to give notice of their proposals to that authority before adopting plans for the construction of the sewer. If within twenty-eight days from the service of the notice the drainage authority gives notice of objection, the local authority may not proceed with the works until the objections have been withdrawn, or the approval of the Ministry after a local inquiry obtained.

(*h*) *Cleckheaton Industrial Self-Help Society v. Jackson* (1866), 14 W. R. 950; 41 Digest 22, 163.

(*i*) *Davis v. Witney U.D.C.* (1899), 63 J. P. 279; 15 T. L. R. 275, C. A.; 41 Digest 22, 166.

(*j*) *Swanston v. Twickenham Local Board* (1879), 11 Ch. D. 838, C. A.; 41 Digest 10, 86.

(*k*) *King's College, Cambridge v. Uxbridge R.D.C.*, [1901] 2 Ch. 768; 41 Digest 10, 88.

(*l*) *Durrant v. Branksome U.D.C.*, [1897] 2 Ch. 291, 301; 41 Digest 21, 161; *Dell v. Chesham U.D.C.*, [1921] 3 K. B. 427; 85 J. P. 186; 26 Digest 408, 1290.

A rural authority is required to give notice of any proposal to carry out sewerage works for any part of their district to the parish council of each parish to be served by the works, or to the parish meeting where the parish is not under a parish council.

Sects. 331, 332, 333 and 334 of the 1936 Act restrict the powers of local authorities under sects 15 and 16, where the exercise of such powers would prejudicially affect the works and rights of water, dock, railway, land drainage, and other public utility undertakings, and provide for the settlement of disputes arising on such matters between the local authority and the body having control of the undertaking involved, by an arbitrator to be appointed by agreement or to be nominated by the President of the Institution of Civil Engineers.

It will be noted that railways are now included, but although they were not specifically mentioned in the 1875 Act the M. of H. would not sanction loans for works likely to cause such interference with any of the above-mentioned undertakings without being satisfied that all relevant consents have been obtained. It is desirable, so far as practicable, to avoid laying sewers in land belonging to any public utility undertaking, particularly in land which is occupied by the permanent way or other works of a railway company. The cost of temporary supporting or protecting works, extra signalling arrangements, and compensation for traffic delays and other matters is often very serious, and may justify heavy additional expenditure in constructing the sewer in some other position.

Sect. 330 of the 1936 Act empowers railway companies, dock undertakers, and land drainage authorities, after giving reasonable notice of their intentions to the local authority concerned, at their own expense, to alter any of the sewers, drains, culverts or pipes of the local authority, which pass under or interfere with, or interfere with the improvement or alteration of, their undertaking, subject to the previous provision by the undertakers, and at their expense, of other drainage works which will be equally effectual and will entail no additional expense on the local authority. Any dispute arising under this section may, at the option of the party complaining, be referred to an arbitrator appointed by agreement or by the President of the Institution of Civil Engineers. The 1936 Act does not authorise the execution of any works in tidal lands below high-water mark of ordinary spring tides except with the approval of the Board of Trade. See sect. 340. [392]

Compensation.—Sect. 278, P.H.A., 1936, imposes upon a local authority the obligation to pay full compensation in respect of the damage arising as the result of the construction of a sewer in, on or over private land, under powers conferred by sects. 15 and 16 of that Act. A local authority is not, however, bound to purchase the land.

In a case under sect. 16, P.H.A., 1875, where a landowner claimed that his land would be so injuriously affected that it was equivalent to taking the whole of the land, it was held that this was a circumstance which could be met by compensation, and that the local authority were not compelled to purchase the land (*m*).

Sect. 278 provides for the settlement by arbitration of all disputes as to the fact of damage or amount of compensation, except in respect of claims for sums not exceeding £50, which are to be determined by a

(*m*) *Roderick v. Aston Local Board* (1877), 5 Ch. D. 328; 41 J. P. 516, C. A.; 41 Digest 22, 174.

court of summary jurisdiction. Sub-sect. (3) provides that a local authority shall not be liable to pay compensation under the section in respect of the exercise by them of the powers conferred by the Act to declare any sewer or sewage works to be vested in them, or in regard to any action by them, in respect of which the Act provides that payment of compensation shall be in the discretion of the local authority. Sub-sect. (4) introduces the principle of "betterment" in connection with the construction of sewers upon private land, and imposes upon the tribunal determining the amount of compensation the determination also of the increase, if any, in the value of any land belonging to the claimant, attributable to the construction of the sewer, and the local authority is entitled to set-off any such increase in value against the amount of any compensation awarded.

Two points in this sub-section should particularly be noted (a) in determining the amount of "betterment," any improvement in the value of land belonging to the claimant, which is not physically affected by the construction of the sewer, must be taken into consideration; (b) the amount of "betterment" is to be a "set off" only against compensation, so that, in the event of "betterment" exceeding compensation, the local authority would not be entitled to recover, from the claimant, any sum in respect of the difference.

Since the passing of the Acquisition of Land (Assessment of Compensation) Act, 1919, compensation in respect of the laying of a sewer in private land is assessed under that Act, which defines the expression "land" as including any interests in land and any easement or right in, to, or over land (n).

As to the kind of damage which gives right of action, the decisions are not conclusive. In one case, for instance (o), it was held that the authority, in erecting a hoarding in a street, which obstructed access to plaintiff's premises, no part of which was taken by the authority were not liable to pay compensation in respect of such obstruction, as a private individual might lawfully have been entitled to cause such an obstruction and in this case it was made by the public body in the discharge of their duties.

Some doubt, however, was thrown upon this decision in another case (p), in which it was held that, although defendant council had not acted negligently or unreasonably in carrying out certain sewerage works, it had in fact obstructed access to the plaintiff's premises, in respect of which he was entitled to compensation. The grounds for this decision were that the obstruction, if caused by a private person, would have entitled the plaintiff to enter an action for damages.

In a claim for compensation under sect. 68, Lands Clauses Consolidation Act, 1845 (q), it was held that an injury which was not done to the land or some interest in the land would not entitle to compensation, although there might be some personal injury connected with the user or the enjoyment of the land. It was also held in this case, in the House of Lords, that a claim for compensation for injury

(n) 2 Halsbury's Statutes 1176. See also *Thurrock Grays and Tilbury Joint Sewerage Board v. Thames Land Co., Ltd.* (1926), 90 J. P. 1; 23 L. G. R. 648; Digest (Supp.).

(o) *Herring v. Metropolitan Board of Works* (1865), 34 L. J. (M. C.) 224; 11 Digest 141, 268.

(p) *Lingké v. Christchurch Corpns.*, [1912] 3 K. B. 595; 76 J. P. 433, C. A.; 11 Digest 141, 269.

(q) *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 31 J. P. 484, H. L.; 11 Digest 140, 265; 2 Halsbury's Statutes 1113.

arising from the act of a public company in the exercise of their statutory powers could not succeed if such a claim could not have been made in the absence of powers to do the act which caused the injury, unless this was expressly provided. See also other cases bearing upon this point (*r*).

An authority which constructed a pumping station, outfall and other works on land adjoining land belonging to another owner, through which they had laid a sewer forming part of the same system (in respect of which sewer they had paid compensation) were held not to be liable for compensation to the owner of the latter land in respect of any damage he might have sustained by reason of the construction of work on land of which he was not the owner (*s*). See also other cases in which this decision was discussed (*t*).

Where it is alleged that injury has been sustained as a result of the negligent or unreasonable exercise of statutory powers by a public body, the remedy is by action (*u*), not by a claim for compensation, but where a public body rely upon this in defending a claim for compensation, they must prove negligence (*v*)

Where, however, the alleged injury arises from the reasonable and proper exercise of powers conferred by statute, which give a right to compensation for injury, the remedy is by claim for compensation (*w*).

One question in regard to which there appears to have been no legal decision is to what extent a local authority, in exercising their powers under sects. 15 and 16, P.H.A., 1936, are entitled to use private land, other than the land forming the actual site of a proposed sewer, as a means of access (*x*), and for the storage and preparation of materials and other essential purposes in connection with the construction of the sewer. In practice, it has been assumed that, so far as land forming part of the site in which the sewer is being constructed is concerned, there is an implied right of such access and use, but that in respect of other land, similar rights can be obtained only by agreement with the owner or occupier.

In a case where access to the line of sewer is normally over a private road, to which the owner of the land in which the sewer is being laid has a right of easement only, and the construction of the sewer may involve transport of a character not covered by the terms of easement, or abnormal wear and damage to the approach road, it appears doubtful whether the local authority, under the powers conferred by the last-

(*r*) *Broadbent v. Imperial Gas Co.* (1857), 26 L. J. (Ch.) 276; 3 Jur. (N. S.) 221; 38 Digest 29, 164; *Southampton and Itchin Bridge Co. v. Southampton Local Board* (1858), 8 E. & B. 801; 38 Digest 19, 103; *New River Co. v. Johnson* (1860), 29 L. J. (M. C.) 93; 24 J. P. 244; 38 Digest 54, 315; *Hall v. Bristol Corpn.* (1867), L. R. 2 C. P. 322; 31 J. P. 376; 38 Digest 14, 38; *Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 402, C. A.; 11 Digest 193, 727.

(*s*) *Horton v. Colwyn Bay and Colwyn U.D.C.*, [1908] 1 K. B. 327; 72 J. P. 57, C. A.; 11 Digest 135, 223.

(*t*) *R. v. Mounford*, [1906] 2 K. B. 814; 70 J. P. 511; *Re London and North Western Rail. Co. and Reddaway* (1907), 71 J. P. 150.

(*u*) *Brine v. Great Western Rail. Co.* (1862), 2 B. & S. 402, 411; 26 J. P. 516; 38 Digest 38, 227; *Clothier v. Webster* (1862), 6 L. T. 461; 38 Digest 41, 241; *Cox v. Paddington Vestry* (1891), 64 L. T. 566; 28 Digest 411, 1315; *Jacob v. Southend-on-Sea Corpn.* (1902), *Times*, December 16; (1903), *Times*, May 21; *Raleigh Corpn. v. Williams*, [1893] A. C. 540; 38 Digest 57, 335.

(*v*) *St. James and Pall Mall Electric Light Co., Ltd. v. R.* (1904), 73 L. J. (K. B.) 518; 68 J. P. 288; 38 Digest 51, 294.

(*w*) *Stainton v. Woolrych* (1857), 23 Beav. 225; 26 L. J. (Ch.) 300; 11 Digest 295, 2245.

(*x*) See P.H.A., 1936, ss. 287, 343, "Premises"; 29 Halsbury's Statutes 507, 538.

mentioned sections, is entitled to use the road in different manner or to a greater extent than the owner of the easement.

Moreover, it is not unusual for men and vehicles engaged upon the construction of a sewer in private land to cause damage by straying beyond the site of the sewer, and the question arises as to whether damage of this nature is damage in respect of which a claim for compensation should be made, or is damage resulting from the negligent and unreasonable act of the local authority. [393]

Generally as to the Laying of Sewers in Private Land.—It is obvious that the right of a local authority to lay sewers in private land should be exercised with caution and care.

In many cases it will be justified as resulting in greater economy or efficiency, or by reason of the avoidance of serious interference with the convenience of traffic or public amenity. Much depends upon the character and user of the land. For instance, the laying of a sewer in the land of a railway company is often very expensive (see *ante*, p. 226), and claims for compensation in respect of a sewer laid through market garden or nursery land, or in circumstances where the carrying on of a business is seriously obstructed, may be very heavy. Moreover, in cases where access and facilities must be maintained to enable business to be carried on, this is likely to cause serious irregularity in the progress of the sewer work, and considerable extra cost and delay may be involved. [394]

Power to Provide and Maintain Sewers at the Cost of Landowners.—Sect. 38, P.H.A., 1936 (y), under which a local authority may require buildings to be drained in combination by means of a private sewer, confers upon the authority the power to provide such private sewer at the expense of the owners.

Power is conferred upon urban authorities under sect. 150, P.H.A., 1875 (z), by notice addressed to the owners or occupiers of premises abutting upon a street (not being a highway repairable by the inhabitants at large), which street is not sewered, etc., to the satisfaction of the urban authority, to call upon such owners and occupiers to sewer, etc., the said street within a time specified in the said notice. Before serving such notice the authority is required to cause plans and sections, to a horizontal scale of not less than 88 feet to an inch, and vertical scale of not less than 10 feet to an inch, and an estimate of the cost of any structural works intended to be executed to be prepared under the direction of their surveyor. In the case of a sewer its depth below the surface of the ground must be shown. Should the owners or occupiers fail to comply with the said notice, the urban authority may, if they think fit, execute the works mentioned or referred to therein, and may recover the expenses so incurred by them from the respective frontagers according to the frontage of their respective premises.

Where the Private Street Works Act, 1892 (a), has been adopted by an urban authority, similar powers are conferred upon the authority, but the procedure is different. Power was given to the M. of H. under the latter Act, by order, to declare the provisions of the Act in force in any rural district or part thereof; such orders became inoperative, however, upon the transfer to county councils of the functions of rural district councils in relation to highways by the L.G.A., 1929. This Act conferred upon county councils (Sched. I.) the whole of the powers contained in the Private Street Works Act, 1892 (a), with the proviso

(y) 29 Halsbury's Statutes 352.
(z) 18 Halsbury's Statutes 686.

(a) 9 Halsbury's Statutes 193.

that the county surveyor, when preparing his specification for private street works under sect. 6 (2) of the Act, shall, if and so far as the works include sewers, consult the R.D.C. It will be observed that sect. 150, P.H.A., 1875, stipulates that plans, sections and an estimate of the probable cost shall be prepared by the authority prior to the service of notice upon the frontagers, whereas sect. 6 (2), Private Street Works Act, 1892, requires that a specification of the works, with plans and sections (if applicable) together with an estimate of the probable expenses and a provisional apportionment of the expenses, shall be prepared and approved by the council before service of notice upon the frontagers. It is the almost universal practice to prepare a specification when proceeding under sect. 150, P.H.A., 1875, in addition to plans, sections and estimates prescribed by that Act.

Apparently there has been no decision of a court upon the question of the extent to which an authority is entitled under the 1875 Act to require observance of a specification which normally describes in far greater detail the character of the works, and of the materials and method of construction to be used therein, than is, or can be, shown upon the plans. In some cases, the estimate is in the form of a priced specification. The point might be of some importance in a case where the works were executed by the frontagers in accordance with the plan and sections, but not in full compliance with the specification. Whether detailed descriptions of materials, methods of construction, etc., included in the estimate, would be binding upon frontagers purporting to comply with a notice under this Act and could be enforced upon them, is not free from doubt, as the main purpose, at any rate, of the estimate is to indicate to the frontagers the probable amount of their liability. It would appear, therefore, to be desirable that, so far as practicable, detailed information in relation to the works, and materials and other matters connected therewith, should be shown upon the plans. Probably the reason why this and other questions have not arisen is that it is seldom practicable for the frontagers to execute the works themselves. Sect. 9 (1), Private Street Works Act, 1892, specifically authorises a local authority to provide separate sewers for the reception of sewage and of surface water respectively, and notwithstanding the absence of any such specific power from sect. 150, P.H.A., 1875, it has been assumed that a local authority is entitled to include in private street works, carried out under this section, both foul and surface water sewers, as works necessary to sewer a street. The usual practice is to include a separate surface water sewer in a private street only where the local authority have adopted a dual system of sewers in the vicinity of the street or where a separate outfall for surface water is available.

In a case (b) where the soil sewage from premises abutting upon a private street was drained into cesspools, and the surface water was conveyed into a river by means of channels constructed by owners of adjoining land, the local authority, after making a contract for the construction of foul and surface water sewers in the street, constructed the surface water sewer only. The cost of this sewer was charged to the rates. Subsequently the authority served notices under sect. 150 requiring the frontagers to provide a surface water sewer in the street, and in default of their so doing proceeded to provide the sewer themselves. The frontagers objected to pay on the ground that

(b) *Bloor v. Beckenham U.D.C.*, [1908] 2 K. B. 671; 72 J. P. 325; 26 Digest 529, 2269.

the street had been sewer'd to the satisfaction of the authority prior to the date of the service of the notices. The magistrates found, as a fact, that the local authority had not been so satisfied, and it was held that, on the evidence, the magistrates were entitled to arrive at this decision.

Whether a road has been sewer'd to the satisfaction of a local authority is a question of fact. Where a sewer has been laid in a private street with the sanction of a local authority in which it has become vested and, although not expressing satisfaction, they have done nothing within a reasonable time to indicate their dissatisfaction, there is evidence that they are in fact satisfied with the sewer for the purpose for which it was used at that time (c). But the existence in a private street of a sewer vested in the local authority does not necessarily indicate that the street is sewer'd to their satisfaction, and that in consequence they are not entitled to require it to be sewer'd under sect. 150 (d). Where a sewer had been laid by the owners of a building estate in accordance with deposited plans approved by the local authority, and the construction had been under the supervision of an officer of the authority who at no time expressed dissatisfaction, the authority, upon the sewer becoming out of repair, five years later, gave notice to the frontagers under sect. 150 to provide a new sewer. In default, the authority themselves laid the sewer, and sought to recover the cost from the frontagers. It was held, that, notwithstanding the fact that the sewer had never been used, and that it had no outfall, and could not therefore be used as a sewer, the local authority were entitled to accept the original sewer and had in fact accepted it, and that, the road having been sewer'd to their satisfaction, they had no power to charge the cost of a new sewer to the frontagers (e).

Under the provisions of the Private Street Works Act, 1892, the question whether a street is "not sewer'd" to the satisfaction of the local authority is one to be determined by a court of summary jurisdiction. One advantage of the Act is that all questions of this kind, and as to the reasonableness of the works and of the estimated cost, are settled before any cost of works has been incurred.

An authority is not entitled under this Act to charge the frontagers in a private street with the cost of a sewer of a capacity exceeding that reasonably required for the drainage of the street, but they may provide such a sewer if they bear the extra cost (f).

A local authority is empowered by sect. 19, P.H.A., 1986, where a person proposes to construct a drain or sewer and they are of opinion that the proposed drain or sewer is, or is likely to be, needed to form part of the general sewerage system for which they are responsible, to require that the drain or sewer shall be constructed, as regards material or size of pipes, depth, fall, direction, or outfall, or otherwise as they may direct. The reasonable cost of any variation, which the council

(c) *Bonella and Twickenham Local Board of Health* (1887), 18 Q. B. D. 577; affirmed 20 Q. B. D. 63; 52 J. P. 356, C. A.; 26 Digest 527, 2263; *Simmonds Brothers, Ltd. v. Fulham Vestry*, [1900] 2 Q. B. 188; 64 J. P. 548; 26 Digest 279, 163.

(d) *Barrow-in-Furness Corp. v. Dawson* (1890), 13 M. C. C. 13; *Walthamstow Local Board v. Staines*, [1891] 2 Ch. 606, C. A.; 26 Digest 538, 2372; *Winslow U.D.C. v. Sidebottom* (1906), 7 J. P. 537; 5 L. G. R. 80.

(e) *Hornsey Local Board v. Davis*, [1898] 1 Q. B. 756; 57 J. P. 612, C. A.; 26 Digest 528, 2264.

(f) *Acton U.D.C. v. Waits* (1903), 67 J. P. 400; 26 Digest 529, 2279.

could not otherwise require, must be repaid by them to the person constructing the drain or sewer, and, in addition, the reasonable cost of repair and maintenance attributable to compliance with their requirements, until the drain or sewer becomes a public sewer.

The section provides a right of appeal to the Minister in regard to the requirements of the local authority, and for the decision of disputes, as to any sum payable by the local authority, by a court of summary jurisdiction or, at the option of the claimant, by arbitration. Local authorities do not appear to be entitled themselves to execute works under this section, as it does not provide for the service of a notice to execute works under sect. 290 of the Act, which in default of compliance with such notice, confers upon the authority the right to execute the works.

Apparently the person proposing to construct the drain or sewer would be entitled to abandon the project if he disagree with the requirements of the authority.

By sect. 23, P.H.A., 1936, a local authority is required to maintain, cleanse and empty all public sewers vested in them. Under sect. 24, which authorises them to charge the cost of maintenance, including repair, renewal and improvement in relation to a public sewer to which this section applies, to owners for the time being of premises served by such sewer, they may improve or enlarge the sewer to enable it to serve additional premises, subject to the additional cost being borne by the local authority.

Under the powers conferred by sect. 36 of the Act, a local authority themselves may undertake the construction of so much of a communication between a drain or private sewer and a public sewer as involves the breaking open of a street and of which notice has been given under sects. 34 or 35 of the Act.

The authority is required to give fourteen days' previous notice of their intention themselves to make the communication, and is entitled to demand from the person desiring the communication to be made prepayment of the cost of the works, as estimated by their surveyor, or satisfactory security for payment.

A person himself proceeding to execute the work upon receipt of the notice is liable to a fine not exceeding £50. If the amount of the deposit exceeds the reasonable cost of the work the balance must be returned to the person concerned, and if the cost exceeds the deposit the authority is entitled to recover the balance. [395]

Power to Recover cost of new Sewers Laid in Highways Repairable by the Inhabitants at Large.—Whilst a local authority may recover from the owners of property the cost of providing sewers in a private street (sect. 150, P.H.A., 1875 (v), and Private Street Works Act, 1892 (w)), they cannot recover the cost of a sewer laid in a highway repairable by the inhabitants at large. Circumstances often arise where this creates difficulty, both for the local authority and the land owner.

A local authority is under the general obligation to provide such public sewers as may be necessary for effectually draining their district, but the authority is not bound to provide sewers in anticipation of the requirements of any part of their district to facilitate building development by a land owner. (See Annual Report of M. of H., 1934-5, p. 29.)

The owner of land abutting upon a "repairable" highway cannot, therefore, require the local authority to construct a sewer in the highway,

or to extend their sewerage system for the drainage of his land. If he is unable to induce the authority to do this, his only course is to abandon his building proposals or to provide cesspools.

Usually drainage into cesspools is not viewed with favour, either by the owner, as the disposal of property so drained is severely prejudiced; or by the local authority.

In many instances, the owner and local authority have entered into a voluntary agreement, under which the local authority undertakes to provide a sewer, and the owner to contribute towards the cost. This arrangement is not always satisfactory.

Often the drainage of the property in question necessitates the construction of a sewer extending some distance beyond the boundary of that property, and a landowner is seldom willing to pay for a sewer which is available for other landowners, who often will not contribute to the cost.

Instances of this kind have become more numerous during recent years, mainly because of the construction by highway authorities of arterial and by-pass roads, which *ipso facto* are repairable by the inhabitants at large, and upon which irregular building development often takes place. The extensive re-arrangement of the boundaries of urban and rural authorities which has been taking place during recent years has also tended to increase the number of such cases.

In 1931, the Romford U.D.C. secured powers under sects. 62 and 64 of their Act of that year to recover contributions from frontagers in respect of the cost of the construction of a sewer in a "repairable" highway by the council, somewhat similar to the powers conferred by the Private Street Works Act, 1892. Under sect. 62 of their Act, the council, if they were of opinion that a sewer they proposed to construct under a "repairable" highway would increase the value of the property abutting upon the portion of the highway in which the sewer would be laid, had power to recover from the frontagers the cost of the sewer in proportion to the length of their respective frontages, or, if they thought just, to apportion the cost according to degree of benefit. Sect. 62 incorporated sect. 10 of the Private Street Works Act, 1892. Right of objection was given to the owner upon five of the six grounds mentioned in sect. 7 of the 1892 Act, and in addition a right of objection on the ground that his premises would not be increased in value by reason of the provision of the sewer, or that the proportion of the cost of the sewer proposed to be charged upon him was excessive, having regard to the degree of benefit which he would derive.

Sect. 64 of the Romford Act deals with another type of case which may be described as being in the nature of a corollary to the underlying principle of sect. 62.

In exercising the powers conferred by sect. 15, P.H.A., 1936 (x), which authorises the laying of sewers in, on, or over private land, a local authority may find it necessary to carry the sewer through land which is subsequently developed. In any event, the owner will be entitled to compensation for damage occasioned on his property. Should a road afterwards be formed on the line of sewer—whether a private street or a highway repairable by the inhabitants at large—the land-owner would be entitled to the benefit of the sewer for any buildings erected upon his land. As the law stands, he would not only receive compensation, but could also use the sewer, and often be enabled to develop land which, without the sewer, could not profitably be used for building.

Sect. 64 of the Romford Act was intended to meet such cases. Sect. 66 of the Act provides that where the local authority has to pay compensation in respect of the laying of a sewer through private land there shall be set off against such compensation any enhancement of value conferred by the sewer upon the land it traverses. Sect. 64 provides for the recovery by the local authority of a contribution from the landowner to the original cost of the sewer proportional to the frontage of his land to the street in which the sewer is laid. Any sum deducted from the amount of compensation paid when the sewer was laid in respect of estimated enhancement of land value is deducted from the contribution (y).

In consequence of adverse criticism of the Romford Act, a Joint Committee of the House of Lords and House of Commons was set up "to consider the provisions of sects. 62 and 64 of the Romford U.D.C. Act, 1931, with respect to the contributions by frontagers to the expenses of the construction of public sewers, and to make recommendations as to the circumstances in which and the conditions upon which similar provisions should be allowed in future Bills."

The committee issued its report in June, 1936.

The main criticism of the Act was that it suffered from the defect always attendant on the attempt to apply legislation, designed to meet one class of cases, to a quite different class of cases, and then endeavoured to remove consequent anomalies by adding a series of qualifications, and that the Act, in its endeavour to remedy an existing defect in the law, had created new injustices.

Parliament has recognised that sect. 62 is not altogether satisfactory. Sections having as their object the conferring of similar powers were amended in certain respects, in numerous Acts of subsequent sessions (z).

The committee expressed themselves as satisfied that sect. 62, even as amended, however commendable as a first essay to deal with a difficult situation, does not adequately or completely meet the case.

They stated that the task of framing a code which will reconcile all the numerous conflicting interests and avoid inflicting injustice in any of the varied circumstances of individual property owners is one of insuperable difficulty.

In the opinion of the committee, the case should be dealt with by the legislature on broader lines, which, while they may not be so exhaustive of all the possibilities, will provide a reasonable working system, and will avoid many of the complications and controversial provisions contained in the clauses hitherto framed.

In reference to sect. 64 of the Romford Act, the committee expressed the opinion that this precedent, having regard also to the provisions of sect. 66, should not be followed.

As to sect. 62 of the Romford Act, the committee recommend that any power given to a local authority under any future legislation to recover contributions from frontagers towards the cost of laying a sewer in a highway repairable by the inhabitants at large should be subject to certain principles which they set out in their report. The report is likely to discourage local authorities from seeking powers of this kind. [396]

Default in Providing Sewers.—Sect. 321, P.H.A., 1936, provides that

(y) A similar provision is now contained in P.H.A., 1936, p. 278 (4); 29 Halsbury's Statutes 500.

(z) The legislative history is set out in detail in articles in the J. P. Jo., Vol. c., p. 522 and Vol. ci., p. 827.

a county council may make complaint to the Minister in respect of alleged failure by the council of any county district within their county to discharge their functions under the Act, and thereupon the Minister shall cause a local inquiry to be held into the matter.

Sect. 322 confers upon the Minister power to hold a local inquiry either when he has received a complaint that any council, port authority or joint board have failed to discharge their functions under the Act in any case where they ought to have done so, or if in the absence of a complaint the Minister is of opinion that inquiry should be made as to whether there has been such a failure.

It will be observed that complaint may be made by any person or body whether having any direct interest in the subject-matter of the complaint or not, but that the Minister may act upon his own initiative where no complaint has been made.

It seems, therefore, that no individual action can be taken against a local authority, either by way of a claim for damages or injunction or on any other grounds (g), in respect of alleged failure to discharge their functions under the Act.

Sect. 322 provides that the Minister, if satisfied, after a local inquiry, that there has been failure to discharge their functions under the Act by the council, authority or board in question, may make an order declaring them to be in default and giving them directions as to the discharge of their functions in such manner and within such time or times as specified in the order, but the Minister may, in lieu of enforcing the order by *mandamus* or otherwise, transfer to the council of the county such functions as he may specify of the council of a county district, or joint board, or port authority lying wholly within their county, and transfer to himself such functions of any other body in default as may be specified by his order. If the order is not complied with within the time specified, it may be enforced by *mandamus* (h).

Such transfer may be either temporary or permanent. It should be noted, however, that the defaulting authority must first be given an opportunity to put its house in order, and it is only after failure to do so that the Minister is able to make an order transferring the function of the local authority.

It will be noted also that, except in regard to a complaint by a county council under sect. 321, action on a complaint is entirely within the discretion of the Minister, but that should he determine to take action, a local inquiry must be held before he is entitled to make a default order.

Sects. 323 and 324 contain provisions in regard to the recovery of expenses incurred by a county council or the Minister in connection with the discharge of any functions transferred under sect. 322. Sect. 325 confers upon the Minister power to vary or revoke any orders he may have made relating to such defaults. [397]

(g) *Robinson v. Workington Corpns.*, [1897] 1 Q. B. 619; 61 J. P. 164, C. A.; 38 Digest 152, 23; *Pasmore v. Oswaldtwistle Urban Council*, [1898] A. C. 387; 62 J. P. 628, H. L.; 41 Digest 19, 148; *Dent v. Bournemouth Corpns.* (1897), 66 L. J. (Q. B.) 395; 41 Digest 30, 225; *Jones v. Barking U.D.C.* (1898), 15 T. L. R. 92, C. A.; 38 Digest 152, 24; *Harrington (Earl) v. Derby Corpns.*, [1903] 1 Ch. 205; 69 J. P. 62; 38 Digest 152, 26; *Clark v. Epsom Rural Council*, [1929] 1 Ch. 287; 93 J. P. 67; Digest (Supp.).

(h) *R. v. Staines Union*; *R. v. Staines Local Board* (1898), 62 L. J. (Q. B.) 540; 58 J. P. 182; 41 Digest 23, 180; *R. v. Staines Local Board* (1894), *Times*, February 27, and *R. v. Sunbury-on-Thames U.D.C.* (1896), *Times*, June 4, and July 20.

Maintenance, Cleansing and Emptying of Sewers.—The obligation to maintain, cleanse and empty all public sewers is imposed upon local authorities by sect. 23, P.H.A., 1936.

Sect. 31 of the same Act imposes upon a local authority a general obligation so to discharge their functions under the previous provisions of Part II. of the Act as not to create a nuisance. This appears to be intended to cover such matters as the ventilation of sewers which was specifically required by the 1875 Act but which is not mentioned in the 1936 Act.

Failure by any council to keep in repair any public sewers vested in them may be dealt with by the Minister of Health under sects. 322 and 324, P.H.A., 1936.

Previous to the passing of this Act any failure by a non-county borough or district council to keep in repair sewers vested in them could be dealt with under sect. 57, L.G.A., 1929, and it appeared that the council might also be liable in damages in cases where they negligently failed to perform this duty (*i*). The effect of sects. 322 and 324 in this regard is not clear. The sections cover generally any failure by a council to discharge any of their functions and would appear to eliminate any right of action by a private individual for damages or an injunction or declaration.

It was held that a local authority may not under the 1875 Act be required to "repair" a sewer which is incapable of serviceable repair owing to defects in its original construction (*j*). In sect. 23 of the 1936 Act the word "maintain" is substituted for "repair" but it seems to be unlikely that this will widen the liability of the council in regard to the repair of sewers originally defective.

It will be observed that no definition is given of the word "maintain," in sect. 23, P.H.A., 1936, but that in sect. 24 the expression "maintenance" for the purpose of that section includes repair, renewal and improvement but limits improvement to that necessary to make a length of sewer adequate for draining the premises served by it immediately before the undertaking of the improvement.

In a case under previous legislation, now repealed, where a sewer had been rendered insufficient and flooding had arisen owing to the connection of additional houses, whilst it was admitted that this constituted failure by the local authority to keep the sewer so as not to be a nuisance as required by sect. 19, it was held that, as the authority were *bona fide* considering a new sewerage system, they had not been guilty of negligence (*k*).

In another case of a similar character (*l*), it was held that damages could not be recovered against the local authority, as failure to provide sufficient sewers was an act of non-feasance for which sect. 299, P.H.A., 1875, provided the remedy. In a case where a local authority had diverted sewage into a sewer already insufficient for the quantity of sewage entering it, thereby causing damage to the occupier of premises, the person sustaining the damage was entitled to maintain an action

(*i*) *Baron v. Portslade U.D.C.*, [1900] 2 Q. B. 588; 64 J. P. 675, C. A.; 41 Digest 25, 192; *Touzeau v. Slough Urban District* (1896), 60 J. P. 103; 41 Digest 25, 196; *Whitfield v. Bishop Auckland U.D.C.* (1897), *Times*, November 22.

(*j*) *R. v. Epsom Union Guardians* (1868), 8 L. T. 383; 41 Digest 21, 158.

(*k*) *Stretton's Derby Brewery Co. v. Derby Corp.*, [1894] 1 Ch. 481; 41 Digest 24, 182.

(*l*) *Robinson v. Workington Corp.*, [1897] 1 Q. B. 619; 61 J. P. 164, C. A.; 38 Digest 152, 23.

for damages, on the ground that the local authority had committed a legal wrong (*m*).

See also a case in which Lora MACNAGHTEN said : "As for negligence, it is difficult to imagine a more conspicuous example of negligence than is shown by repeatedly pouring offensive stuff into a receptacle or channel proved over and over again to be insufficient to hold and pass it on. They might just as well pour this stuff directly on the plaintiff's land" (*n*).

In another case (*o*), it was held, where a local authority was entitled to discharge water into a stream but had failed to enlarge the capacity of the stream or otherwise improve their drainage system to prevent damage by flooding arising as the result of building developments rendering the stream of insufficient capacity to carry the water entering it, that the only remedy available was by application to the Minister under sect. 299, and payment of compensation under sect. 308, P.H.A., 1875, now sects. 322 and 278 of the P.H.A., 1986 (*p*).

In a case where in times of storm a sewer became over-charged, and water was forced up a branch drain, thereby causing damage to a wall, the local authority was held not to be guilty of negligence in providing sufficient sewers, in that the damage was caused owing to an extraordinary storm, and could not have been prevented by the exercise of ordinary care by the local authority. The court of appeal held that the only remedy was by complaint to the Local Government Board, as the plaintiff was in effect " seeking to compel the local authority to effect an alteration or improvement in their sewage system" (*q*).

In another case (*r*), judgment for damages was given against a local authority, where the jury found that a sewer was constructed with defective joints, and that it was improperly and negligently maintained, because the authority failed to open up the whole of it at the time it was partially repaired, and that in consequence water escaped from the sewer and caused damage to the plaintiff's property.

In an action against a local authority for damages sustained as the result of their failure to cleanse an open sewer, as required by sect. 19, P.H.A., 1875 (*s*), the plaintiff was successful (*t*) and Lord HALSBURY, L.C., in delivering judgment in the Court of Appeal, said as to sect. 299 (*u*) : "I agree that *maintenance* of a sewer is not the same thing as that which it is the authority's duty to do by virtue of sect. 19. . . . Sect. 299 does not, in my opinion, touch the duty of the authority to use proper diligence in the *management* of existing sewers, and I cannot see either in the section, or in the cases cited, anything to take away the right of action of a person who has sustained an injury through the neglect of the authority."

A local authority is not liable in damages for failure to keep their sewers clean, if they have used reasonable care and skill in endeavouring to do so (*v*).

Damage arising from the subsidence of a highway as a result of the

(*m*) *Dent v. Bournemouth Corp.* (1897), 66 L. J. (Q. B.) 395 ; 41 Digest 30, 225.

(*n*) *Hawthorn Corp. v. Kannuluik*, [1906] A. C. 105 ; 41 Digest 25, 194.

(*o*) *Hesketh v. Birmingham Corp.*, [1924] 1 K. B. 260, C. A. ; 38 Digest 48, 280.

(*p*) 13 Halsbury's Statutes 750, 753 ; 29 Halsbury's Statutes 525, 500.

(*q*) *Jones v. Barking U.D.C.* (1898), 15 T. L. R. 92, C. A. ; 38 Digest 152, 24.

(*r*) *Whitfield v. Bishop Auckland U.D.C.* (1897), Times, November 22; *affd.* on appeal, [1898] W. N. 37.

(*s*) 13 Halsbury's Statutes 634 (repealed).

(*t*) *Baron v. Portslade U.D.C.*, [1900] 2 Q. B. 588 ; 64 J. P. 675 ; 38 Digest 153, 27.

(*u*) 13 Halsbury's Statutes 750.

(*v*) *Hammond v. St. Pancras Vestry* (1874), L. R. 9 C. P. 316 ; 38 J. P. 456 ; 38 Digest 25, 135.

defective condition of a sewer did not render an authority responsible for the maintenance of the sewer under the P.H.A., 1875 (*w*), liable in damages, except in the event of negligence by the authority (*x*).

In a case where a local authority, by allowing a ventilation pipe from their sewer to communicate with the interior of a house, thereby allowed sewer gas to enter the house, the effects of which caused the death of a man, the authority were found liable under Lord CAMPBELL'S Act (*y*) to pay damages to the wife and children of the man (*z*). In another case (*a*), a plaintiff succeeded in recovering damages from a local authority, which was found to have negligently and improperly altered certain sewers in such a manner that they were not properly ventilated ; in consequence the plaintiff sustained illness.

Men sustaining damage from sewer gas, whilst engaged in cleansing a sewer, recovered damages from the local authority (*b*).

It has been established that a local authority is liable for the negligence of contractors whom they employ in constructing a sewer (*c*).

A local authority will not, however, be liable in respect of defects such as those causing accidents through subsidence, unless they can be shown to have been negligent (*d*). It has been held that a local authority that failed to keep their sewers clean, notwithstanding the exercise of reasonable care and skill, that is to say who, although in default, had not been negligent, were not liable in damages for any results of their default (*e*).

Sects. 19, 34 and 38, P.H.A., 1936, confer upon a local authority power to control the construction of private sewers and drains, and sect. 41 provides that notice shall be given to the local authority in respect of any repair, reconstruction or alteration of any underground drain, but there appears to be no similar obligation to give notice in regard to a "private sewer." This control given to local authorities should be exercised effectively with due regard to their obligations under sect. 23 of the Act. The infiltration of subsoil water through sewers or drains that are not watertight may give rise to serious difficulties by so increasing the flow in sewers and reducing their capacity for surface and storm water as to cause flooding. A defective sewer or drain may also allow percolation of its contents to such an extent as to wash away the soil by which it is supported, whereby it may become fractured and allow subsoil to enter. It is particularly important that the levels at which a drain is laid should be such that the danger of flooding of premises served by the drain should be reduced so far as practicable.

The provisions of sect. 20, P.H.A., 1936, which vests all public

(*w*) 18 Halsbury's Statutes 623.

(*x*) *Lambert v. Lowestoft Corpn.*, [1901] 1 K. B. 590 ; 65 J. P. 326 ; 38 Digest 26, 141 ; *Broome v. Bromley R.D.C.* (1905), 27 M. C. C. 481.

(*y*) Fatal Accidents Acts, 1846 and 1864 ; 12 Halsbury's Statutes 333, 335.

(*z*) *Smith v. King's Norton R.D.C.* (1896), 60 J. P. 520.

(*a*) *Brown v. Wickham U.D.C.* (1898), *Times*, July 14.

(*b*) *Digby v. East Ham U.D.C.* (1896), 18 T. L. R. 11 and (1897), *Times*, May 25 ; 36 Digest 21, 98.

(*c*) *Hardaker v. Idle District Council*, [1896] 1 Q. B. 335 ; 60 J. P. 196, C. A. ; 84 Digest 161, 1255 ; *Ward v. Lee* (1857), 7 E. & B. 426 ; 21 J. P. 179 ; 38 Digest 40, 238 ; *Smith (James) & Co. v. West Derby Local Board* (1878), 3 C. P. D. 428 ; 42 J. P. 615 ; 26 Digest 411, 1317 ; *Hyams v. Webster* (1868), L. R. 4 Q. B. 188 ; 34 Digest 165, 128 ; *Bathurst Borough v. Macpherson* (1879), 4 App. Cas. 256 ; 43 J. P. 827 ; 26 Digest 405, 1274, P. C.

(*d*) *Lambert v. Lowestoft Corpn.*, *supra*.

(*e*) *Hammond v. St. Pancras Vestry* (1874), L. R. 9 C. P. 316 ; 38 J. P. 456 ; 38 Digest 25, 135 ; *Bateman v. Poplar District Board of Works* (No. 2) (1887), 27 Ch. D. 272.

sewers, with certain exceptions, in a local authority, and the definitions of "sewer," "private sewer," and "public sewer" in sect. 343 of the Act are important in relation to the obligation of a local authority to maintain sewers. This obligation is confined to public sewers vested in the local authority by sect. 20, which, in addition to sewers constructed by, and at the expense of a local authority or acquired by them, includes sewers constructed to the satisfaction of the authority in private streets, other than county council sewers, and sewers declared by the authority to vest in them under sect. 17 of the Act, including all "combined drains" constructed before the commencement of the Act, but power is conferred upon the local authority under sect. 24 to recover the cost of maintenance of any length of public sewer, from the owners for the time being of the premises served by such sewer, which, immediately before the passing of the Act, was maintainable by persons other than the local authority under the provisions of some enactment, scheme or agreement entitling the local authority to require such persons to maintain such length of sewer or rendering them liable for expenses incurred by the authority in maintaining it. Sect. 24 also confers similar powers upon a local authority in respect of any length of sewer vested in them immediately before the passing of the Act which was not constructed at their expense, or at the expense of their predecessors, but which is situate upon any premises served by the sewer or common to any two or more of them, or lies in any roadway, footway, passage or alley used solely or mainly as a means of access to any such premises, but is not a highway repairable by the inhabitants at large. Local Acts which relate to the repair of combined drains were repealed by this section.

The definition of "sewer" in the P.H.A., 1875, appears to have a wider application than the corresponding definition in the Act of 1936. Sect. 4 of the former Act included all sewers and drains of every description, except "drains" as defined in that section and drains under the control of a road authority, not being a local authority under the Act. Sect. 343 of the 1936 Act defines the term "sewer" as not including a "drain" as defined in the section, but all other drains and sewers "used for the drainage of buildings and yards appurtenant to buildings." It seems doubtful, therefore, whether, for instance, a pipe connecting with a public sewer, and used only for road drainage, would fall within the definition of "sewer." A pipe which conveys to a public sewer the drainage of premises, such as an open market, which are not provided with buildings, would appear to be neither a "drain" nor a "sewer," as in both cases the existence of buildings is contemplated by the definition. Whilst the decisions of the courts in many of the cases arising under provisions repealed by the 1936 Act are no longer of any significance, there are some which may retain their force under the new Act.

It used to be held that, under certain circumstances, a natural stream might automatically become a sewer for the maintenance of which a local authority would become responsible, but it appears doubtful whether sect. 20 or the definition of "sewer" in sect. 343 of the 1936 Act would cover any means of drainage formed without artificial works, such as an entirely natural watercourse (*f*).

The decisions on this question before the passing of the 1936 Act seemed to be somewhat conflicting, but it may be useful to quote the words of BYRNE, J., in a case where a sewage polluted tidal stream was

(f) See now *George Legge & Son, Ltd. v. Wenlock Corp.*, [1938] A. C. 204; [1938] 1 All E. R. 87; 102 J. P. 98; Digest Supp., H. L.

held to be a sewer (*g*). He said : " I think it is possible to form a sewer without the construction of any artificial work. If, for instance, an old ditch, or the bed of a watercourse from which all flow of water has been diverted, is utilised for the carriage of sewage matter, such utilisation would be properly described as forming a sewer. I think a sewer may be formed within the meaning of the section either by artificial construction or by the utilisation of natural channels.. It is a question of degree, and I should think that none could dispute that, if a body of sewage a hundred times as great as the natural flow of water in a stream were discharged into the channel continuously, a sewer would be formed."

In another case (*h*), where a stream the natural flow of which had been utilised by a factory from which it was discharged in a polluted state, with other polluting liquids, into the channel of the stream near the factory, which channel received also the slop water from two cottages, it was held that the channel was a stream, as pure water would still flow along its course, but for the acts of the owner of the factory. [398]

Alterations and Discontinuance of Sewers.—Sect. 22, P.H.A., 1936, confers upon local authorities the power to alter the size or course of any public sewer vested in them or to discontinue or prohibit the use of any such public sewer either entirely or for foul water drainage only or for surface water drainage only.

The words "cover in," in sect. 18, P.H.A., 1875, were held to authorise the conversion of an open watercourse into a pipe sewer, but these words have been omitted from sect. 22 of the 1936 Act (*i*).

As a condition precedent to the exercise of the powers conferred by this section, the local authority must provide a sewer "equally effective for the use of any person lawfully using the existing sewer who may be deprived by the action of the authority of the use of the existing sewer" (*j*).

Sect. 18, P.H.A., 1875, which conferred similar powers upon local authorities, provided that, in the exercise of the powers, the local authority should not create a nuisance (*k*). This obligation is now covered by sect. 31 of the 1936 Act.

It will be observed that sect. 22 of the 1936 Act deals only with the exercise of the powers of a local authority in relation to alteration of existing public sewers and the protection of persons lawfully draining into such sewers, and that it contains no general power to "improve" an existing sewer as was included in sect. 18, P.H.A., 1875, but it may be inferred from the use of the words "maintain" and "maintenance" in sects. 23 and 24 of the 1936 Act that the word "maintain" in sect. 22 covers improvement. [399]

Access for Repair.—It has been held that, notwithstanding the absence of any express right of access to a sewer in private property, there is an implied right of access to the extent reasonably necessary to

(*g*) *Wheatcroft v. Matlock Local Board* (1885), 52 L. T. 356; 41 Digest 7, 46.

(*h*) *West Riding of Yorkshire Rivers Board v. Preston & Sons* (1904), 69 J. P. 1; 92 L. T. 24; 41 Digest 8, 51.

(*i*) 18 Halsbury's Statutes 634; 29 Halsbury's Statutes 343. *Wheatcroft v. Matlock Local Board* (1885), 52 L. T. 356; 41 Digest 7, 46; cf. *A.-G. v. Hackney Local Board* (1875), L. R. 20 Eq. 626; 41 Digest 28, 221.

(*j*) *A.-G. v. Acton Local Board* (1882), 22 Ch. D. 221; 41 Digest 19, 150.

(*k*) *R. v. Bradford Navigation Co.* (1865), 6 B. & S. 631, 648; 29 J. P. 613; 38 Digest 42, 247.

enable a local authority to fulfil their obligations to maintain, cleanse, etc., sewers belonging to them, as provided by the P.H.As. (*l*).

Sect. 25, P.H.A., 1936, is intended to protect the right of access of a local authority by prohibiting unauthorised building over a sewer. [400]

Protection of Sewers.—The most common cause of damage to sewers is by subsidence of the subsoil or removal of lateral support, but a sewer may be damaged also by the discharge into it of corrosive liquids, or by explosion caused by the entry of petrol or explosive gas, by superimposed loads or by direct interference with its structure. Sewer authorities are given a large measure of statutory protection in respect of each of these conditions.

There may be interference with the efficient operation of a sewer without any physical damage to the sewer itself, by the entry into it of matter which causes obstruction to the free flow of the sewage.

Many old sewers have sustained severe damage by the action of tree roots, but usually this has been rendered possible by the defective condition of the joints in the pipes or brickwork permitting the roots to enter the sewer. Generally the joints of such sewers have been made with clay instead of cement, with the result that the roots in their search for moisture have found their way into the sewer. In course of time the roots, by increasing in size, have fractured the pipes, or thrown them out of alignment. In many cases where no physical damage has been done to the sewer, the roots have gradually multiplied to such an extent as partly or entirely to fill sections of sewer and cause such an obstruction to the flow that it has been necessary to renew the sewer.

Where damage to a sewer is the result of some natural cause such as the action of the roots of trees belonging to a private owner, the local authority appears to have no right of recovery of the cost of repairs from the owner except in regard to sewers in respect of which they are entitled to recover the cost of maintenance under sect. 24, P.H.A., 1936.

The right of a local authority to lateral support of sewers in cases other than those involving the working of minerals is not free from doubt (*m*), but the right to subjacent support appears to have been definitely established (*n*).

In some mining districts, damage to sewers as the result of subsidence following mining operations is a serious problem.

The owner of land through which a sewer is laid is entitled to claim that any obligation upon him to avoid interference with the support of such sewer should be taken into consideration in assessing the amount of compensation to which he is entitled. In most cases, however, where an owner may suffer damage by being prevented from interfering with the support of a sewer, any such interference would arise from mining operations, and would fall within the provisions of the P.H.A., 1875 (Support of Sewers) Amendment Act, 1883 (*o*). Since the passing of this Act, a local authority cannot be compelled to acquire a right of vertical or lateral support of a sewer laid in private land, or to pay

(*l*) *Birkenhead Corpn. v. London and North Western Rail. Co.* (1885), 15 Q. B. D. 572; 50 J. P. 84, C. A.; 41 Digest 16, 119.

(*m*) *Roderick v. Aston Local Board* (1877), 5 Ch. D. 328; 41 J. P. 516, C. A.; 41 Digest 22, 174; *Jary v. Barnsley Corpn.* (1907), 2 Ch. 600; 71 J. P. 468; 41 Digest 36, 265.

(*n*) *Re Dudley Corpn.* (1881), 8 Q. B. D. 86; 46 J. P. 340; 51 L. J. (Q. B.) 121; 45 L. T. 783, C. A.; 41 Digest 36, 264.

(*o*) 18 Halsbury's Statutes 798.

immediate compensation in respect of any such right, where the working of minerals arises. The local authority is not entitled to any minerals lying under the sewer unless the rights in such minerals are purchased, neither can the authority be required to purchase such minerals. No question as to the right of support or as to compensation therefor arises until the owner desire to work the minerals, and gives notice to the local authority to that effect. The local authority may require the minerals to be left unworked to provide support for the sewer to an extent which must be defined by the authority, and the owner is entitled to be compensated for the loss he sustains by being prevented from working the minerals. Unless the local authority is willing to compensate the owner for the damage he would sustain by being prevented from working the minerals within the limits defined by the authority, he is entitled at the expiration of thirty days from the date of his notice to the authority to proceed with the working of the minerals. He must, however, do so in a reasonable and proper manner. Rights acquired by local authorities before the passing of the Act are preserved to them, but any such rights must have been "acquired" either by prescription, agreement, or otherwise before the passing of the Act. The Act applies to all "sanitary" works as defined by sect. 2 which include "any works of sewerage, drainage, sewage disposal." It incorporates sects. 18 to 27 (both inclusive) of the Waterworks Clauses Act, 1847 (*p.*)

In practice, difficulties arise more often from the admission into sewers of matters which cause obstruction to the free flow of sewage than of matter which gives rise to physical damage to the structure of the sewer.

The latter seldom occurs, except as the result of some chemical action upon the materials of which the sewer is constructed. In some cases, however, where a sewer has a steep gradient, the admission of sewage containing a relatively large proportion of hard grit may cause damage to the sewer by abrasion of the inner surface. Having regard, however, to the fact that surface water from roads and paths normally contains large quantities of similar matter, it may be difficult to prevent the discharge of trade effluents containing such matter under the provisions of the P.H. (Drainage of Trade Premises) Act, 1937 (*q.*), or by bye-laws made under the Act on the ground that it is likely to cause injury to the sewer.

The extent to which the flow in a sewer may be obstructed will be affected not only by the substance which enters the sewer from a particular source, but by what is coming in from other sources, and by the quantity of sewage flowing in the sewer from time to time. For instance, the discharge into a sewer of water containing a relatively high quantity of solid matter (whether finely divided or not) at a time when the total flow and the velocity are comparatively small may give rise to deposit in the sewer and consequent obstruction of flow, whereas with a greater flow and consequently higher velocity no obstruction may occur. In cases where a sewer is of sufficient size to receive both sewage and surface water, there are often times, during dry weather, when these conditions may arise owing to the great differences between normal dry weather flow and flow during exceptionally wet periods.

Deposit is also encouraged by defects in a sewer or by its invert being out of alignment or laid to a gradient which does not give a "self-cleansing" velocity.

Some substances, *e.g.* from laundries, the liquid waste from which may be discharged into the sewers of a local authority without their consent (sect. 4, 1937 Act), often cause gradual incrustation of the internal surfaces of drains and sewers, but usually any serious effect is confined to the drains.

It will be appreciated that whilst the P.H. (Drainage of Trade Premises) Act, 1937, and bye-laws made thereunder (see p. 220, *ante*), and sect. 27 P.H.A., 1936, as limited by the 1937 Act, afford a large measure of protection in regard to public sewers some aspects of the question will still give rise to difficulties.

Usually any such chemical action upon, or attrition of the structure of, a sewer is very slow, and it is often difficult to trace it to any particular source. The likelihood of such damage is a matter for expert evidence, which will usually disclose a conflict of opinion. It is well known that certain chemical substances have an injurious effect upon Portland cement used in sewers, but the extent of injury will depend upon the degree of dilution and in some measure upon the composition of the concrete or mortar concerned. Moreover, certain soils naturally contain substances injurious to cement.

Power to prevent the entry into a sewer of soil from private land is given by sect. 22, P.H.A., 1925 (*r*), but this section applies only to land abutting upon a highway repairable by the inhabitants at large, although more serious difficulties often arise in connection with property abutting upon unmade private streets. Parliament appears to have feared some disadvantage from the general operation of the powers conferred by this section, as the consent of the Minister of Health is required before the section can be adopted by an urban district having a population of less than 20,000, and in rural districts the functions under the section can be exercised by the county only. (Sect. 4 and Sched. II. of this Act, and sect. 30 (2) and Sched. I., Part I., L.G.A., 1929 (*s*)). Urban districts which have adopted the section may operate it concurrently with the county council. Under the section, an urban authority may by notice require the owner or occupier of land abutting upon a highway repairable by the inhabitants at large so to fence off, channel or embank his lands as to prevent soil or refuse from his land from falling upon or being washed or carried into the street or into any sewer or gulley therein in such quantities as will obstruct the highway, or choke up the sewer or gulley. Failure to comply with such notice within twenty-eight days renders the offender liable to a penalty not exceeding £5 and a daily penalty not exceeding 20s.

No power is given to the urban authority themselves to execute the works in case of default by the owner of the land.

Accumulations of soil or refuse, such as are contemplated by the section, may seriously affect the public interest. In many cases, an authority is compelled to remove the obstruction without any means of recovering the cost from the person responsible for it. Moreover, the authority may incur liability to the landowner if in the process, or as a result of the removal of the obstruction, he suffers damage.

An appeal under this section against the requirements of the authority will lie to quarter sessions (sect. 7, P.H.As. Amendment Act, 1907 (*t*)). [401]

(*r*) 18 Halsbury's Statutes 1122.

(*s*) 18 Halsbury's Statutes 1116, 1155; 10 Halsbury's Statutes 975.

(*t*) 18 Halsbury's Statutes 918.

Power to Restrict Use of Sewers.—The powers of a local authority to provide separate sewers for sewage and surface water would be of limited value, unless they were entitled to prevent a sewer from being used for a purpose for which it was not intended. The power to restrict the use of sewers in this respect is now specifically conferred upon local authorities by sect. 34 (1) (b), P.H.A., 1936, which provides that, where separate public sewers are provided for foul water and surface water, an owner or occupier is not entitled to discharge directly or indirectly foul water into a surface-water sewer or, except with the approval of the local authority, surface water into a sewer provided for foul water, or to have his drains connected directly with a storm-water overflow. It will be noted that an owner or occupier is entitled to connect his drains or sewer to the public sewers for the purpose of discharging thereinto "foul water and surface water."

It is curious, however, that throughout the section the right to discharge is limited to foul water and surface water except that "liquid from a factory" may include surface or storm water (sub-sect. (1) (a) (i.). It is difficult to understand why any distinction should be drawn between "surface" and "storm" water as the former includes rainfall, and storm water is merely the result of intense rainfall. No mention is made of storm water in sects. 22 or 32. Under sect. 22 of the 1936 Act a local authority may, subject to the conditions laid down in the section, prohibit the use of any public sewer vested in them entirely, or for the reception of foul or surface water drainage.

Sect. 27 of the Act prohibits the passage into a sewer or drain of matters likely to injure the sewer or drain or interfere with the free flow of its contents or affect prejudicially the treatment of its contents and certain specified matters which may be or become dangerous or give rise to a nuisance. Apparently there is no right to discharge subsoil water into a public sewer although it is not specifically prohibited. This is a matter of importance to local authorities as such discharge may increase substantially the volume to be carried by the public sewers and to be treated at the disposal works. It often is also a matter of importance to the owner of the land and buildings as the ready disposal of subsoil water may have a considerable effect upon the value of property.

The P.H. (Drainage of Trade Premises) Act, 1937, repealed and replaced sect. 26, P.H.A., 1936, which required a local authority to afford facilities for the drainage of liquids from factories into their sewers subject to certain conditions contained in the Act which included the right of a local authority to refuse to admit such liquids into a public surface-water sewer or into any public sewer if their admission would contravene the provisions of sect. 27 of the 1936 Act or be likely to overload the sewers or the sewage disposal works of the authority.

The 1937 Act whilst conferring upon manufacturers the right to discharge liquids from their manufacturing processes generally similar to the right conferred upon them by sect. 26 of the 1936 Act, provides for the making of bye-laws by local authorities to control the discharge of such liquids into sewers (see p. 220, *ante*). [402]

London.—Under sect. 28 of the P.H. (London) Act, 1936 (*u*), it is the duty of the L.C.C. to construct such sewers and works, including

works for deodorising sewage, as they think necessary for securing the effective sewerage and drainage of the county, for improving the main drainage of the county, and for preventing, as far as practicable, the sewage of or within the county or any part of that sewage from passing into the River Thames in or near the county. (See also London note to title SEWAGE DISPOSAL.) The section also imposes a duty on the council to make diversions or alterations, close up, destroy or discontinue sewers where they consider that necessary. The duty to construct sewers is absolute, but the mode of exercise of the duty is discretionary. As to the possibility of enforcing this duty by *mandamus*, see *R. (or Lee District Board) v. L.C.C.* (1899), 64 J. P. 20; 82 L. T. 306, C. A. (v), and the footnote thereon in (1906) 2 K. B. at p. 383. The L.C.C. is not bound to make sewers, which would properly be district sewers, to intercept the drainage of every house which drains directly into the Thames (w).

Metropolitan borough councils are also by sect. 17 (x) under a duty to make, repair and maintain sewers and works, to make such diversions or alterations as are necessary; and to raise, strengthen, etc., banks, etc., abutting upon streams (not being flood works under the Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879 (xx)). The mode of exercise of this duty is discretionary, but it appears that in a proper case the court would grant *mandamus* to compel the borough council to perform the duty (y). The procedure should be by action (yy).

No new sewer may be constructed without the consent of the L.C.C. (z). Plans must be submitted to the L.C.C. (a). Before connecting up with any sewers of the L.C.C. a borough council must give three days' notice to the L.C.C. (b). No person may make or branch any sewer into a borough council or county council sewer without the consent, in the case of a county council sewer, of the county council, and also in either case of the borough council, who must obtain the approval of the L.C.C. before giving consent (c). Consent of the borough council must be obtained to the making or branching of drains into the county council sewers (d). As to alteration of plans, see sect. 50 (e). If approved works are not executed within twelve months, further approval must be obtained (f). As to penalties, see sects. 52-8 (g). A sewer constructed without approval remains a sewer and vests in the borough council (h). As to power to carry sewers under streets or land, see title SEWERAGE AUTHORITIES. See also *L.C.C. v. Port of London*

(v) 41 Digest 27, 211.

(w) *Westminster Corp. v. L.C.C.*, [1906] 2 K. B. 379; 41 Digest 25, 199.

(x) 30 Halsbury's Statutes 453. (xx) 20 Halsbury's Statutes 225.

(y) *R. v. St. Luke's, Chelsea, Vestry* (1862), 1 B. & S. 903; 41 Digest 26, 200; see also *R. v. St. Mary, Islington, Vestry* (1898), *The Times*, August 3; 41 Digest 27, 215; *R. v. L.C.C.* (1899), *supra*.

(yy) *R. v. St. Giles, Camberwell, Vestry* (1897), 66 L. J. (Q. B.) 387; 41 Digest 27, 214.

(z) P.H. (London) Act, 1936, s. 27; 30 Halsbury's Statutes 458.

(a) *Ibid.*, ss. 46, 48, 49; *ibid.*, 471, 472.

(b) *Ibid.*, s. 47; *ibid.*, 471.

(c) *Ibid.*, ss. 48, 49; *ibid.*, 471, 472.

(d) *Ibid.*, s. 48.

(e) 30 Halsbury's Statutes 472.

(f) P.H. (London) Act, 1936, s. 51; 30 Halsbury's Statutes 472.

(g) 30 Halsbury's Statutes 473-474.

(h) *St. Matthew Bethnal Green, Vestry v. London School Board*, [1898] A. C. 190;

41 Digest 14, 100.

Authority, [1914] 2 Ch. 362 (*i*). The councils may execute works before paying compensation (*j*). The county council have power to construct bridges, arches, culverts, passages or roads in connection with sewerage works for the purpose of preserving communications between lands through which the sewerage works are made or carried (*k*).

In cases where any person was liable before 1856 (*l*) to maintain a sewer the borough council may alter or improve the sewer and apportion the cost between such person and the council (*m*). Borough councils have power to alter or discontinue the use of sewers so long as they do not create a nuisance (*n*). These powers must be exercised at the council's expense (*o*). Under sect. 25 (*p*) a borough council, after notice to contiguous boroughs, and under sect. 30 (*q*) the L.C.C. may stop up streets during sewerage works. Sect. 33 (*r*) empowers the L.C.C. to make orders for the guidance and control of borough councils as to construction, etc., of sewers (see title SEWAGE DISPOSAL). Under sect. 34 (*s*) bye-laws may be made by the L.C.C. dealing, *inter alia*, with these matters, except that as regards the City bye-laws may deal only with main drainage. Sect. 33 does not empower the L.C.C. to order a borough council to undertake specific new sewerage works. Initiative is left to the borough council (*t*).

Sewers, Maintenance of.—Under sect. 17 of the P.H. (London) Act, 1936 (*u*), borough councils, and under sect. 28 (*a*) the L.C.C., are under a duty to repair and maintain all sewers vested in them which have not been duly closed up, destroyed or discontinued. A borough council must, by traps, ventilation, etc., prevent exhalation of effluvia (*b*) (sect. 20). Under sect. 21 (*c*) a borough council, and under sect. 31 (*d*) the L.C.C., must cause every sewer vested in them to be constructed, covered and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed and emptied, and for the purpose of cleansing sewers may construct reservoirs, sluices, engines and other works as are necessary. Sect. 22 (*e*) imposes a duty on borough councils to cleanse street gratings and gulleys vested in or under the control of the L.C.C.

Sewers, Protection of.—The provisions for the protection of sewers in London are contained in the following sections of the P.H. (London) Act, 1936. Sect. 56 (*f*), penalty for discharge of solid matter into the

(*i*) 41 Digest 26, 209.

(*j*) *North London Rail. Co. v. Metropolitan Board of Works, Winter v. Metropolitan Board of Works* (1859), John. 405; 11 Digest 295, 2243; *Hughes v. Metropolitan Board of Works* (1861), 9 W. R. 517; 11 Digest 295, 2244.

(*k*) P.H. (London) Act, 1936, s. 28 (3); 30 Halsbury's Statutes 459.

(*l*) *I.e.*, before the coming into operation of the Metropolis Management Act, 1855; 11 Halsbury's Statutes 889.

(*m*) *Ibid.*, s. 19; *ibid.*, 454.

(*n*) *Ibid.*, s. 18; *ibid.*,

(*o*) *St. Marylebone Vestry v. Viret* (1865), 19 C. B. (N. S.) 424; 41 Digest 26, 202; *St. Martin-in-the-Fields Vestry v. Ward*, [1897] 1 Q. B. 40; 41 Digest 26, 204.

(*p*) 30 Halsbury's Statutes 457.

(*q*) *Ibid.*, 460.

(*r*) *Ibid.*, 462.

(*s*) *Ibid.*

(*t*) *R. v. St. George, Hanover Square, Vestry*, [1895] 2 Q. B. 275; 41 Digest 27, 216.

(*u*) 30 Halsbury's Statutes 458.

(*a*) *Ibid.*, 458.

(*b*) P.H. (London) Act, 1936, s. 20; 30 Halsbury's Statutes 455.

(*c*) 30 Halsbury's Statutes 455.

(*d*) *Ibid.*, 460.

(*e*) *Ibid.*, 455.

(*f*) *Ibid.*, 475.

county council's sewers ; sect. 57 (g), penalty for discharge of offensive liquid refuse into county council sewers ; sect. 58 (h), orders of L.C.C. prohibiting the introduction of matters involving danger to persons entering sewers or to the materials thereof ; sect. 59 (i), entry and inspection of premises by county council's officers ; sect. 60 (k), saving for heated water from railways of London Passenger Transport Board ; sect. 61 (l), saving for brewery water, snow and water for flushing ; sect. 62 (m), penalty for discharge of petrol and carbide of calcium ; sect. 63 (n), penalty for sweeping dirt into sewers (forcing mud the consistency of butter is an offence under this provision) (o) ; sect. 64 (p), prevention of obstruction of sewers by soil or refuse ; sect. 65 (q), restriction on trapping gulleys connected with county council's sewers ; sect. 66 (r), penalty for encroaching on sewers (a wall for excluding the River Thames is a sewer for the purpose of this provision) (s) ; sect. 67 (t), penalty for interference with sewers ; sect. 68 (u), punishment of trespassers in sewers. The Metropolitan Police Act, 1889, sect. 60 (8) (a), prescribes a penalty for placing or allowing dirt, etc., to fall into any sewer, pipe or drain in any street or public place. [408]

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| (g) 30 Halsbury's Statutes 476. | (h) <i>Ibid.</i> |
| (i) <i>Ibid.</i> , 477. | (k) <i>Ibid.</i> |
| (l) <i>Ibid.</i> , 478. | (m) <i>Ibid.</i> , 479. |
| (n) <i>Ibid.</i> , 480. | |
| (o) <i>Metropolitan Board of Works (Solicitors) v. Eaton</i> (1884), 48 J. P. 611 ; 41 Digest 45, 329. | |
| (p) 30 Halsbury's Statutes 480. | |
| (q) <i>Ibid.</i> , 481. | |
| (r) <i>Ibid.</i> | |
| (s) <i>Poplar Board of Works v. Knight</i> (1858), E. B. & E. 408 ; 41 Digest 18, 145. | |
| (t) 30 Halsbury's Statutes 481. | |
| (u) <i>Ibid.</i> , 482. | |
| (a) 19 Halsbury's Statutes 123. | |

SHELL-FISH, CLEANSING OF

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*See also titles : FOOD AND DRUGS ;
FOOD AND DRUGS AUTHORITIES ;
SEA FISHERIES.*

Preliminary.—The cleansing of shell-fish is governed by regulations (a) made under the P.H.A., 1896 (b), as extended by the P.H.

(a) As to regulations made under repealed statutes, see the Foods and Drugs Act, 1938, s. 101 (3) ; 31 Halsbury's Statutes 317.

(b) S. 1 ; 18 Halsbury's Statutes 871, repealed and replaced by P.H.A., 1936, s. 148, Sched. III., Parts V., VI. ; 29 Halsbury's Statutes 427, 548, 551.

(Regulation as to Food) Act, 1907 (c), and also by the P.H. (Cleansing of Shell-fish) Act, 1932 (d). The last two Acts are now repealed and replaced by the Food and Drugs Act, 1938 (dd).

The M. of H. has a general power under sect. 8 of the last mentioned Act to make regulations for prevention of danger to public health arising from the preparation, storage and distribution of articles of food intended for sale for human consumption (e). [404]

Action on Suspicion of Danger from Shell-fish.—By the Public Health (Shell-fish) Regulations, 1934 (ee), made under this power, the M.O.H. of a local authority (f) is required in certain cases to make an investigation with regard to any laying (whether private or public) (g) from which shell-fish suspected of having caused or being likely to cause danger to public health have been derived, and make a report to the local authority. For the purpose of such inquiries the local authority may require information from fishmongers supplying shell-fish in the district (h). The local authority are also required to take action on receipt of a representation from another local authority (i). [405]

Power of Local Authority to make Orders.—The local authority, upon consideration of the report and after giving all persons interested a reasonable opportunity of making representations, may, if they are satisfied that the consumption of shell-fish taken from the laying is likely to cause danger to the public health, make an order (k) prohibiting the distribution for sale for human consumption of shell-fish taken from the laying, either absolutely or subject to such exceptions and conditions as they may think proper having regard to the interests of public health (l). This will enable a local authority to prescribe as a condition of the sale of shell-fish for human consumption either re-laying for an approved period in pure water or sterilisation by steam or cleansing by a satisfactory process in an establishment approved by the M. of H. A local authority is required to give notice to the appropriate sea fisheries committee of a proposal to make an order and of any order which may be made (m). It is suggested by the M. of H. that, especially where an order contains an absolute prohibition, the scheduled form may be adapted by the addition of a preamble or otherwise so as to indicate briefly the grounds on which it is made, so as to warn the public that shell-fish in the prohibited area are polluted and unfit for human food (n). As soon as practicable after an order is made it is to be published in newspapers circulating in the district, and before it comes into operation warning notices are to be posted in conspicuous places

(c) 8 Halsbury's Statutes 862.

(d) 25 Halsbury's Statutes 468.

(dd) 31 Halsbury's Statutes 249.

(e) *Ibid.*, 257.

(ee) S.R. & O. 1934, No. 1342.

(f) *Ibid.*, art. 4 (1), (3); "local authority" means a port health authority, the common council of the City of London, the council of a metropolitan borough and the council of an urban or sanitary district (Art. 2 (2)).

(g) A "laying" means a foreshore, bed, laying, pond, pit, ledge, float or other place where shell-fish are taken or deposited (Art. 2, *ibid.*).

(h) Art. 4 (2); "district" is defined in Art. 2 (2).

(i) Art. 4 (4), (5).

(k) The order must be substantially to the like effect of the form set out in the schedule to the regulations.

(l) Art. 5.

(m) *Ibid.*

(n) See Circular 1446 of M. of H., December 12, 1934.

in the vicinity of the laying (*o*). It is desirable that such notices should indicate that the laying in question has been closed by reason of the fact that it has been found that shell-fish taken therefrom are so polluted as to be unfit for human consumption. [406]

Appeals.—Persons aggrieved by an order made under Art. 5 are given a right of appeal to the Minister, who may confirm, modify or quash the order (*p*). [407]

Variation and Revocation of Orders.—Provision is made enabling a local authority to vary or revoke orders made by them under these Regulations or the revoked Regulations of 1915, if they are satisfied that this may be done without prejudice to public health. A statement of the reasons for such variation or revocation must be sent to the Minister of Health and the Minister of Agriculture and Fisheries and also to any local authority who made representation in regard to any laying to which the original order related (*q*).

Any person who has applied to a local authority for the variation or revocation of an order may appeal to the Minister against a decision of a local authority not to vary or revoke an order or their neglect to do so within a reasonable time (*r*). [408]

Offences and Penalties.—Contravention of the provisions of an order made under the Regulations renders the offender liable to a penalty of £100 and in the case of a continuing offence a daily penalty of £50 (*s*). [409]

Provision of Cleansing Apparatus.—Where an order has been made under the above provisions the local authority should consider whether the circumstances are suitable for the provision of cleansing apparatus. The Food and Drugs Act, 1938 (*t*), empowers county councils or a local authority under the Act to provide tanks or other apparatus for cleansing shell-fish (together with all works and appliances necessary for the proper use thereof) (*u*), and to make reasonable charges for their use (*a*). Power is also given to such authorities to make contributions towards the expenses of providing and making available to the public means for cleansing shell-fish, whether incurred by another authority or joint committee of authorities or by any other person (*b*). The M. of A. are prepared to give advice and assistance to any local authority which contemplates making such provision. [410].

London.—The provisions of the P.H. (Cleansing of Shell-fish) Act, 1932, so far as they apply to London are repealed and re-enacted in the P.H. (London) Act, 1936 (*c*), under which Act powers are given to the L.C.C. and the sanitary authorities, *i.e.* metropolitan boroughs and City corporation. [411]

(*o*) Art. 6 (1), (2).

(*p*) Art. 9, *ibid.*

(*q*) Art. 10.

(*r*) *Ibid.*

(*s*) Art. 12.

(*t*) S. 39; 31 Halsbury's Statutes 279.

(*u*) This includes the subjection of shell-fish to germicidal treatment; s. 39 (5).

(*a*) S. 39 (1).

(*b*) S. 39 (2).

(*c*) S. 191; 30 Halsbury's Statutes 553.

SHERIFFS

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Nature and Origin of the Office.—The office of High Sheriff is not only the oldest office under the Crown in the kingdom, dating as it does from Saxon times, but is still at the present day one of great practical importance (*a*). The duties of the Sheriff relate exclusively to the county or the city or borough for which he is appointed. These duties were formerly very wide and varied, but in modern times the growth of a complex system of national and local government has, in effect, left the sheriff with only one sphere of duties of any substantial practical importance, namely to act as executive officer of the Supreme Court of Judicature. It is the duty of the sheriff to enforce all judgments and orders of the court whether civil or criminal. His functions are confined, however, to judgments and orders of the Supreme Court. The justices in petty sessions (the police court) and also the county court are provided with their own machinery for enforcing their orders and do not rely on the sheriff. Further, with regard to the criminal business of the Supreme Court, the sheriff is no longer concerned, as he once was, with the safe custody and the control of convicted prisoners, these functions having passed into the hands of the county justices and the Prison Commissioners. He is still, however, responsible for the execution of sentence of death. The sheriff also remains in fact, as well as theory, the executive officer of the court in all matters in which he has not been expressly superseded; and if the court makes an order for which no other means of enforcement have been provided the duty of enforcing it will fall upon the sheriff (*b*). [412]

Ceremonial Position.—It naturally follows from the great antiquity of the office that the High Sheriff, during his term of office, occupies a principal position, in point of rank and dignity, in the county. It was formerly thought that he came first in the table of precedence but, by royal warrant (*c*), he now ranks in the counties after the Lord Lieutenant (although the latter office dates only from Tudor times) and in cities and towns, by statute (*d*), after the mayor. It is the privilege and also the duty of the High Sheriff to be in close attendance upon the judge when holding the assize for the county. [413]

(*a*) The statute law on the subject has been largely, but not exhaustively, consolidated by the Sheriffs Act, 1887; 17 Halsbury's Statutes 1107.

(*b*) See, for example, *R. v. Lydford*, [1914] 2 K. B. 378; 41 Digest 74, 81.

(*c*) Royal Warrant of February, 1904.

(*d*) L.G.A., 1933, s. 18 (5); 26 Halsbury's Statutes 314.

Qualification.—A person may not be appointed High Sheriff of a county unless he has sufficient land within his county to answer the king and his people (*e*). There is no definition in figures of this qualification, but what is required is that a person shall be the owner of landed property in the county and also possessed of sufficient wealth to be in a position to maintain adequately his own dignity on occasions of ceremony and also that of the judge of assize and to be in a position to make reparation for any wrong committed by his subordinates in the execution of their duties. In the case of sheriffs for cities and towns the possession of landed property is not necessary (*f*).

Certain persons are exempt from the duty to serve and may not be appointed. They are as follows. 1. Members of the House of Commons. 2. Field officers of the Territorial Forces. 3. The Postmaster-General and officers of the post-office. 4. Commissioners, officers, collectors and persons employed by the Commissioners of Inland Revenue. 5. Customs officers. 6. Officers on the active list of the regular forces. [414]

Appointment.—A sheriff is appointed annually for every county (*g*) (except that only one person is appointed for the two counties of Cambridge and Huntingdon) (*h*). Certain towns enjoy the privilege of appointing their own sheriff. In these towns, which are known in this connection as "counties of cities" and "counties of towns" the person appointed acts as sheriff, and the sheriff of the county (known as the "county at large" in this connection, to distinguish it from the county of a city) has no power to intermeddle so far as concerns matters arising within such town or city.

The manner of appointing sheriffs is radically different in the case of counties of cities and towns, on the one hand, and counties at large on the other. In the former case, the appointment is made by the council of the town or city, on November 9 in each year, at the quarterly meeting of the council immediately after the election of the mayor (*i*). Sheriffs of counties at large are appointed by His Majesty in person by the ceremony known as "pricking the sheriff." The list of nominations from which the appointment is made by pricking is compiled in the following manner. The judge going the summer assizes receives from the sheriff a list of at least four suitable names, two of these being of his own selection, and two being the names which were handed to the judge by his predecessor the year before. The names so obtained are transmitted to the King's Remembrancer who compiles a complete list and sends it to the Privy Council. On November 12 in each year at the Royal Courts of Justice the nomination takes place before the Lord Chancellor, the Chancellor of the Exchequer and other great officers of State, or any two of them, and the Lord Chief Justice and Justices of the High Court, or any two of them. The King's Remembrancer reads out the list, in the case of each of the counties in alphabetical order, of the three persons nominated in the preceding year, adding in the case of one of them "serving sheriff." That name is, of course, struck out (*j*). The King's Remembrancer then says, "One new

(*e*) Sheriffs Act, 1887, s. 4; 17 Halsbury's Statutes 1107.

(*f*) *Ibid.*, s. 36 (2); *ibid.*, 1122.

(*g*) *Ibid.*, s. 3; *ibid.*, 1107.

(*h*) *Ibid.*, s. 32; *ibid.*, 1120.

(*i*) Municipal Corporations Act, 1882, s. 170; 10 Halsbury's Statutes 576.

(*j*) Under the Sheriffs Act, 1887, s. 3 (2); 17 Halsbury's Statutes 1107, a sheriff shall not hold office for more than one year.

name wanted." This is supplied by a judge from one of the fresh names given him at the Summer Assize. If one or both the persons nominated the previous year make excuses which are allowed, two names or three names are supplied by the judge. Application to be excused (e.g. on ground of ill-health or poverty) may be made either by letter to the clerk of the privy council or, at the nomination, in person or by counsel. When three names have been selected for each county they are placed in order of selection and transmitted to the privy council. At a council held the following March the King pricks a name from the list of nominations for each county and that person is appointed sheriff. It is the practice to prick the first name on the list and as the other names are carried forward to the next year a person may expect to be appointed sheriff in the third year after first being placed on the list.

A person appointed is bound to serve; if he refuses, he is liable to a criminal prosecution. [415]

Under Sheriffs, Deputy-Sheriffs, Bailiffs and Officers.—Every sheriff, whether of a county at large or of a county of a city or town must within one month of the posting of his appointment in the *London Gazette* appoint in writing an under-sheriff and transmit a duplicate of the appointment to the clerk of the peace of the county (k). Every sheriff must also appoint (no time limit for this being laid down, but the need for dispatch is apparent from his function) a deputy who resides or has an office within one mile from the Inner Temple Hall. The function of the deputy is to receive writs, issue warrants thereon and make returns to writs. The delivery of a writ to the deputy in London operates as delivery to the sheriff.

If the High Sheriff dies during his year of office, it is the duty of the under-sheriff to continue to exercise the office of High Sheriff in the name of the deceased until a successor is appointed (l).

The sheriff must also appoint bailiffs and other officers for the actual work of summoning, collecting fines and executing writs. Deputies, bailiffs and other officers must, on appointment, and before they begin to act, make a declaration in statutory form before a judge of the High Court or a justice of the peace for the county to the effect that they will execute their office honestly and properly (m). The High Sheriff is legally responsible and will have to answer in damages for any negligence or misconduct of his under-sheriff or other officers. Bailiffs are often required by the High Sheriff who appoints them to enter into a bond with sureties for the due execution of their office and for accounting to him for fees and perquisites received by them and to give an indemnity to him against liability for extortion or other misconduct on their part. [416]

Powers, Duties and Liabilities.—For the most part the High Sheriff is entitled to perform his duties through subordinates. It is obligatory on him, however, personally to meet the judge of assize on arrival at the assize town and to attend him on the bench until excused. He is also responsible for making proper provision for judge's lodgings and for maintaining the comfort and dignity of the judge during the assize.

The sheriff is responsible for summoning a sufficient number of jurors upon receipt of a precept from the judge and to give public notice

(k) *Sheriffs Act, 1887, s. 23 (1); 17 Halsbury's Statutes 1115.*

(l) *Ibid., s. 25; ibid., 1116.*

(m) *Ibid., s. 26; ibid.*

of the holding of the assize. He must also make arrangements for looking after the jurors who are summoned.

At county quarter sessions the sheriff, on receipt of a precept from the clerk of the peace, must summon a sufficient number of jurors and his under-sheriff attends the court in order to deliver a return to the precept. The High Sheriff does not attend. At borough quarter sessions the sheriff has no duties other than ceremonial.

The sheriff still has a few judicial functions. The most important is to hold an inquiry into the amount of damages under a writ of inquiry issued by the Supreme Court upon a judgment. The inquiry is usually presided over by the under-sheriff who sits with a jury to assess damages. Again, under a writ of *elegit* it is the duty of the sheriff (in practice performed by the under-sheriff) to hold an inquiry with a jury to ascertain what lands the execution debtor holds in the county and what is their value.

By far the most important duty of the sheriff is the execution of process for the Supreme Court. With regard to criminal matters the only function practically remaining for the sheriff is to carry out the sentence of death (*n*). The execution of the prisoner must take place in the prison in which he is confined, and it may thus happen that the sheriff is required to act outside his county, this being the only case of powers and duties exercisable outside his county. Personal attendance of the High Sheriff at the hanging is not essential, but the presence either of the sheriff or of his properly appointed subordinate (who may, but need not be, his under-sheriff) is obligatory. The sheriff, or his subordinate, takes over control of the prison for a period during the execution and must provide an executioner. The H.O. lends its assistance for securing a suitable person.

With regard to civil process, with very few exceptions all writs of execution on judgments and orders of the Supreme Court are directed to the sheriff. The delivery of the writ to the sheriff or his deputy is both an order to act and a justification for whatever is done under it so long as it conforms to the law relating to execution (*o*). The commonest writ is the writ of "fi. fa." under which the sheriff is ordered to seize and sell so much of the goods of the execution debtor lying in the county as will produce the amount owing for judgment and costs including the costs of execution. It is lawful for the execution creditor to sue out writs to the sheriffs of several counties at the same time (*p*). The sheriff must seize only goods which are the property of the execution debtor. If he takes the goods of any other person he commits the tort of conversion against such person and is liable in damage. In the case of conflicting claim, the sheriff may issue an interpleader summons (*q*). Apart from this right, the sheriff is placed in a very unenviable position in levying executions since, on the one hand, he is liable to any strangers whose rights he may infringe and also to the execution debtor if he exceeds his powers and, on the other hand, he is liable to the execution creditors for negligence in failing to secure fruits of the execution which

(*n*) Sheriffs Act, 1887, s. 13; 17 Halsbury's Statutes 1110. See also H.O. memorandum of 1891.

(*o*) It is beyond the scope of the work to state the law relating to execution. Reference may be made to Mather on Sheriff and Execution Law; Halsbury, Laws of England, titles "Execution," "Public Authorities and Public Officers," "Sheriffs and Bailiffs."

(*p*) R.S.C., O. xlvi., r. 17a.

(*q*) R.S.C., O. lvii., r. 1 (b).

might reasonably have been obtained. The court has power, however, in interpleader proceedings to order that no action be brought against the sheriff (r).

The sheriff is responsible for collecting debts due to the Crown under process of the court including forfeited recognisances and fines. The ordinary process for securing payment of such debts is the writ of extent. [417]

Expiration of Office.—The sheriff, at the expiration of his term of office, must deliver to the incoming sheriff a correct list (s) of all prisoners in his custody and of all writs not wholly executed and all the books and records belonging to his office. The incoming sheriff signs the list and this constitutes a discharge so far as concerns the outgoing sheriff. The sheriff must also, within two months, submit his accounts to be audited in such manner as the Treasury may direct (t). [418]

London.—Under L.G.A., 1888, sect. 40 (2) (u), the Crown may appoint a sheriff for the County of London, excluding the City, and all enactments, laws and usages with respect to sheriffs so far as circumstances admit apply to the County of London. Under sect. 46 (6) (a) the right of the City to elect the sheriffs of Middlesex was taken away and the appointment was placed on the same footing as that of other sheriffs. Sect. 41 (8) (b) provides that the sheriff of the City shall not have any authority except in the City. As to the sheriffs of the City, see title CITY OF LONDON. [419]

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- (r) See 18 Halsbury Hailsham ed., 622.
(s) Sheriffs Act, 1887, s. 28.
(t) *Ibid.*, s. 21.
(u) 10 Halsbury's Statutes 718.
(a) *Ibid.*, 726.
(b) *Ibid.*, 721.
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SHIRE HALL

See OFFICIAL BUILDINGS.

• SHOOTING GALLERIES

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See also titles :

BUILDING BYE-LAWS ;
 FIREWORKS AND FIREARMS ;
 LOCAL TAXATION LICENCES ;
 OPEN SPACES ;

PUBLIC PARKS ;
 RIFLE RANGES ;
 ROUNDABOUTS ;
 TOWN PLANNING SCHEMES.

Bye-Laws.—A borough council, U.D.C. and R.D.C. may make bye-laws for the prevention of danger from the use of firearms at shooting ranges and galleries (a).

County councils and borough councils are also empowered to make bye-laws for the good rule and government of the whole or any part of the county or borough and for the prevention and suppression of nuisances therein (b), and it follows that county councils and borough councils can make bye-laws with respect to shooting galleries under this power as well as under the specific power of the Act of 1890. In this connection it has been decided that a bye-law to the effect that "no person shall to the annoyance or disturbance of residents or passengers keep or manage a shooting gallery, swingboat, roundabout or other like thing in any street or public place or on land adjoining or near to such street or public place provided always that the bye-law shall not apply to any fair lawfully held," is valid (c).

The H.O. for the guidance of county councils and borough councils have issued a form of model bye-law on this subject which provides that no person shall in any street or public place or on any land adjoining or near to any street or public place keep, manage or cause to be kept or managed a shooting gallery, swingboat, roundabout or any other

(a) P.H.As. Amendment Act, 1890, s. 38 ; 18 Halsbury's Statutes 839. This section refers to urban authorities only, but by s. 5; *ibid.*, 826, the M. of H. is empowered to declare any of the provisions of the Act to be in force in a rural district or any part thereof. By the Rural District Councils (Urban Powers) Order, 1931, S.R. & O., 1931, No. 580 ; 24 Halsbury's Statutes 262, s. 38 has been applied to rural districts. Urban and rural authorities are defined in the Act as "urban sanitary and rural sanitary authorities," but see L.G.A., 1929, s. 21 and L.G.A., 1933, ss. 1, 31, 32, Sched. XI., Part IV. ; 26 Halsbury's Statutes 306, 320, 519, as to constitution of urban and rural district councils. S. 9 of the 1890 Act ; 18 Halsbury's Statutes 826, applies the provisions of ss. 182—186 of the P.H.A., 1875 ; 18 Halsbury's Statutes 704—706 (repealed except so far as may be material for the purposes of any unrepealed enactment ; see P.H.A., 1936, Sched. III., Part I. (2); 29 Halsbury's Statutes 545) to the making of such bye-laws. See L.G.A., 1933, ss. 250—252 ; 26 Halsbury's Statutes 440—445, and title BYE-LAWS.

(b) L.G.A., 1933, s. 249 ; 26 Halsbury's Statutes 439. Bye-laws made by a county council have no effect in a borough. See also L.G.A., 1933, ss. 250—252 ; 26 Halsbury's Statutes 440—442, and title BYE-LAWS.

(c) *Teale v. Harris* (1896), 60 J. P. 744 ; 38 Digest 159, 67, a decision on bye-laws made under s. 23 (repealed) of the Municipal Corporations Act, 1882.

construction of a like character so as to cause obstruction or danger to the traffic in such street or public place (d).

How far building bye-laws under the P.H.As. extend to shooting galleries would appear to depend upon the physical character of the gallery, i.e. whether it can be held to be a building at all, and, if so, whether the byelaws locally in force are so framed as to apply to it (e). Shooting galleries most commonly form part of what is known as a pleasure fair and a number of local authorities have by private Acts obtained special powers for their regulation either by means of bye-laws or licensing provisions (f). [420]

Town and Country Planning.—It would seem possible to secure some measure of control of shooting galleries by means of zoning provisions in a planning scheme. The word "buildings" in the Town and Country Planning Act, 1932, includes "structures and erections" (g) and in most cases a shooting gallery would probably fall within the meaning of the expression "place of assembly" or "special buildings" as used in the model clauses issued by the M. of H. (h). Furthermore, the model clauses contain provisions for the establishment of "use zones" in which *inter alia* the use of land whether forming the site of a building or not for a purpose for which in that zone a building may not be erected or used or may be erected and used only with the consent of the responsible local authority, may not be commenced without the consent of such authority (i). It must be remembered, however, that there is now a provision in the model clauses to the effect that such of them as are within the Part relating to building structures and use of land shall not prohibit or restrict or enable the responsible local authority to prohibit or restrict the use of land for a fair or a show by a travelling roundabout proprietor, a travelling showman or stall holder (k). [421]

Firearms Certificate and Gun Licence.—A person who purchases or acquires or has in his possession any firearm or ammunition without, or otherwise than as authorised by, a firearm certificate granted under

(d) Forms of Good Rule and Government. Bye-laws issued by H.O.

(e) A steam roundabout, shooting gallery and caravans were held not to be "wooden structures or erections of a movable or temporary character" within the meaning of the Metropolis Management and Building Acts Amendment Act, 1882; 45 & 46 Vict. c. 14 (repealed): *Hall v. Smallpiece* (1890), 54 J. P. 710; 34 Digest 590, 101. This section of the Act of 1882 was, however, replaced by enactments in successive London Building Acts, and the status of such structures under the London Building Acts (Amendment) Act, 1899, s. 30; 32 Halsbury's Statutes 402, remains to be determined. In *Whitehorn v. Smelt* (1910), 74 J. P. 102; 38 Digest 188, 263, a structure known as a "houp-la" was used for the amusement of persons who paid for the privilege of throwing hoops amongst certain articles or prizes. It was octagonal in shape with an upright central pole thirteen feet high, from the top of which radiated eight beams fastened to eight upright posts and supporting a canvas roof, and was closed in by a canvas screen except on one side. It had been taken down several times since its erection. It was decided that the structure in question could not as a matter of law be said to be a building within the meaning of s. 27 of the P.H.As. Amendment Act, 1907. This section has been repealed by the P.H.A., 1936, s. 346(1), Sched. III., Part III; 29 Halsbury's Statutes 541. See title BUILDING BYE-LAWS and P.H.A., 1936, s. 53; 29 Halsbury's Statutes 634.

(f) See *Smethwick Corporation Act*, 1929, s. 91; 19 & 20 Geo. 5, c. xcii.; *West Bromwich Corporation Act*, 1930, s. 140; 20 & 21 Geo. 5, c. cxx; *Barking Corporation Act*, 1938, s. 248; 22 & 24 Geo. 5, c. lxviii.

(g) Town and Country Planning Act, 1932, s. 53; 25 Halsbury's Statutes 520.

(h) Town and Country Planning Model Clauses for use in the preparation of schemes, June, 1938.

(i) *Ibid.*, clause 31.

(k) *Ibid.*, clause 34 (iv.).

the Firearms Act, 1937, or who fails to comply with any condition subject to which a firearm certificate is held by him, is guilty of an offence under the section unless he comes within the scope of the exemptions mentioned in the Act (*l*). The exemptions referred to include any person conducting or carrying on a miniature rifle range (whether for a rifle club or otherwise) or shooting gallery at which no firearms are used other than miniature rifles not exceeding .23 calibre and such person may without holding a certificate purchase, acquire or have in his possession such miniature rifles or ammunition suitable therefor and any person at such range or gallery may without holding a certificate use any such rifle and ammunition (*m*). Subject to certain statutory exceptions every person who uses and carries a gun must obtain a yearly gun licence and every person who uses or carries a gun elsewhere than in a dwelling-house or the curtilage thereof without having in force a gun licence is liable to a penalty of ten pounds (*n*).

A person having a licence or certificate to kill game does not, however, require a gun licence (*o*). The expression "gun" includes a firearm of any description and an air gun or any other kind of gun from which any shot, bullet or other missile can be discharged (*p*). It would seem that the section would apply to guns used in shooting galleries and to every one who fires such a gun there (*q*), but in practice, persons using guns at shooting galleries are usually not required to take out a gun licence if the proprietor holds a gun or game licence, although where he owns separate galleries he must hold a gun or game licence in respect of each. [422]

London.—Shooting galleries are dealt with in bye-laws made by the L.C.C. and certain metropolitan borough councils for "Good Rule and Government." See London note to title RIFLE RANGES. [423]

(*l*) 30 Halsbury's Statutes 908. "Firearm," except where otherwise expressly provided, is defined in the Act as meaning "any lethal barreled weapon of any description from which any shot bullet or other missile can be discharged, and shall include any prohibited weapon, whether it is such a lethal weapon as aforesaid or not, any component part of any such lethal or prohibited weapon, and any accessory to any such weapon designed or adapted to diminish the noise or flush caused by firing the weapon," but s. 1 of the Act does not apply to a smooth bore gun having a barrel not less than twenty inches in length; an air gun, air rifle or air pistol not being of a type declared by rules made by the Secretary of State under the Act to be specially dangerous. "Prohibited weapon" means any firearm or weapon referred to in the Act. "Ammunition" is defined by s. 32 (1) of the Act; 30 Halsbury's Statutes 929, as meaning, except where otherwise expressly provided, any ammunition for any firearm and includes grenades, bombs and other like missiles whether capable of use with such a firearm or not, and prohibited ammunition. By s. 16 (2); 30 Halsbury's Statutes 920, s. 1 does not apply to the following types of ammunition, namely, cartridges containing five or more shot, none of which exceeds nine twenty-fifths of an inch in diameter; ammunition for an air-gun or air-rifle or air-pistol; blank cartridges not exceeding one inch in diameter. "Prohibited ammunition" means any ammunition referred to in s. 17 (1) (c) of the Act; 30 Halsbury's Statutes 921.

(*m*) Firearms Act, 1937, s. 4 (9); 30 Halsbury's Statutes 913.

(*n*) Gun Licence Act, 1870, ss. 3, 7; 8 Halsbury's Statutes 1093—1094. Such licences are granted by county councils and county borough councils, and the duty payable is ten shillings. See title LOCAL TAXATION LICENCES.

(*o*) *Ibid.*, s. 7; *ibid.*, 1094.

(*p*) *Ibid.*, s. 2; *ibid.*, 1093.

(*q*) See article in 62 J. P. Jo. 35.

SHOPS

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See also titles : EMPLOYMENT OF CHILDREN AND YOUNG PERSONS ; FACTORIES AND WORKSHOPS ; STREET TRADING.

PRELIMINARY

The law regulating the conditions of employment and the hours of labour in shops and the closing of shops is to be found in the Shops Act, 1912 (*a*), which consolidated the repealed Shops Regulation Acts, 1892—1911, the Shops Act, 1913 (*b*), the Shops (Hours of Closing) Act, 1928 (*c*), the Shops Act, 1934 (*d*), the Shops Act, 1936 (*e*) (applying the Shops Acts to the business of lending books for profit), the Retail Meat Dealers' Shops (Sunday Closing) Act, 1936 (*f*), the Shops (Sunday Trading Restrictions) Act, 1936 (*g*), The Young Persons (Employment) Act, 1938, Part II (*gg*), and the various regulations contained in the Statutory Rules and Orders made thereunder (*h*).

INTERPRETATION OF TERMS

"Shop" and "Shop Assistant."—“Shop” has generally throughout the Shops Acts the meaning of premises where any retail trade or business is carried on (*i*), but in the application of the provisions of the Act of 1934 relating to the employment of persons under eighteen and to the health and comfort of shop workers the expression “shop” means shop as defined above and also any wholesale shop, and includes any

- (*a*) Referred to as “the Act of 1912”; 8 Halsbury’s Statutes 613.
- (*b*) Referred to as “the Act of 1913”; *ibid.*, 628.
- (*c*) Referred to as “the Act of 1928”; *ibid.*, 647.
- (*d*) In this article referred to as “the Act of 1934”; 27 Halsbury’s Statutes 226.
- (*e*) Referred to as “the Act of 1936”; 29 Halsbury’s Statutes 149.
- (*f*) 29 Halsbury’s Statutes 150.
- (*g*) *Ibid.*, 152.
- (*gg*) 31 Halsbury’s Statutes 161.
- (*h*) These are S.R. & O., 1912, No. 316; S.R. & O., 1913, No. 250; S.R. & O., 1937, No. 271; S.R. & O., 1939, No. 1841.
- (*i*) Act of 1912, s. 19 (1); 8 Halsbury’s Statutes 624.

warehouse occupied for the purpose of his trade by any retail trader or wholesale dealer or merchant (j).

Although the words "trade" or "business" are used in the definition of "shop" in the Act, neither is defined therein. However, the expression "retail trade or business" includes the business of barber or hairdresser, the sale of refreshments, intoxicating liquors, retail sales by auction (k), the business of lending books or periodicals for the purpose of gain (l), but does not include the sale of programmes and catalogues and other sales at cinemas and places of amusement (k). "Trade" is traffic by way of sale or exchange or commercial dealing, and it may even include manufactures (m), and a great variety of occupations of commercial character (n). "Business" is a wider term than "trade" (o). *Prima facie* a shop is a place where goods are sold by retail and stored for sale (p), a place where ordinary retail selling and serving of customers takes place (q); but to make premises a shop it is not necessary that goods should be stored upon the premises (r), or that goods should be handed out or capable of being carried away (s). An ordinary residential hotel is not a "shop," nor is the residential portion of an hotel; but a portion of the hotel which is open to non-residents as well as residents may be a shop—thus, the grill room of a hotel used as a restaurant by both residents and non-residents, and the kitchen in which the food is prepared for consumption in both the residential and non-residential parts of the hotel forms part of the shop (t). A members' club is not a shop, as there can be no "sale" to members in a members' club (u).

"Shop assistant" means any person wholly or mainly employed in a shop in connection with the serving of customers (a) or the receipt of orders or the dispatch of goods (b); and, as to premises in respect of which a notice under the Shops Act, 1913, is in force, includes all persons wholly or mainly employed in any capacity on premises for the sale of refreshments, whether licensed for the sale of intoxicating liquor or not (c).

(j) *I.e.* premises occupied by a wholesale dealer or merchant where goods are kept for sale wholesale to customers resorting to the premises. See Act of 1934, s. 15 (1); 27 Halsbury's Statutes 238.

(k) Act of 1912, s. 19 (1); 8 Halsbury's Statutes 624.

(l) Act of 1936, s. 1; 29 Halsbury's Statutes 149.

(m) *Taxation Commissioners v. Kirk*, [1900] A. C. 588; 43 Digest 6, 9.

(n) *Chartered Mercantile Bank of India, London and China v. Wilson* (1877), 3 Ex. D. 108; 43 Digest 5, 1.

(o) *Harris v. Amery* (1865), L. R. 1 C. P. 148; 43 Digest 7, 23.

(p) *Per Lord TREVETHIN in Dennis v. Hutchinson; Trafford v. Same*, [1922] 1 K. B. 693; 24 Digest 930, 209 (where it was held that an amusement stall on a beach where no sales took place was not a shop), at p. 697.

(q) *Ibid.*, *per Avory*, J., at p. 698.

(r) *Stallard v. Marks* (1878), 3 Q. B. D. 413; 30 Digest 83, 645.

(s) *Wallace Bros. v. Dixon* (1917), 2 I. R. 236; 24 Digest 918, p (where a coal merchant's branch office where no coal was kept and only orders taken was held to be a shop).

(t) *Gordon Hotels, Ltd. v. L.C.C.*, [1916] 2 K. B. 27; 24 Digest 928, 193. The question as to whether a hotel which is licensed is a shop is not free from doubt, see *Savoy Hotel Co. v. L.C.C.*, [1900] 1 Q. B. 66; 24 Digest 928, 192.

(u) *Graff v. Evans* (1882), 8 Q. B. D. 378; 8 Digest 522, 109; *Metford v. Edwards*, [1915] 1 K. B. 172; 8 Digest 522, 111. See further cases collected at 24 Digest 928.

(a) See *Melluish v. L.C.C.*, [1914] 3 K. B. 325; 24 Digest 928, 194; *France v. L.C.C.*, [1915] 1 K. B. 688; 24 Digest 929, 205; and *Gordon Hotels, Ltd. v. L.C.C.*, *supra*. A waiter serving meals to non-residents is a shop assistant (*George Hotel (Colchester) Ltd. v. Bell*, [1938] 3 All E. R. 790; (Digest Supp). And see note (c), p. 263, *post*.

(b) Act of 1912, s. 19 (1); 8 Halsbury's Statutes 624.

(c) Act of 1913, s. 1 (1), (5); *ibid.* An occupier who takes advantage of the

For the purposes of sect. 1 of the Act of 1912, which provides for weekly half-holidays and meal intervals for shop assistants, this definition of shop assistant includes young persons wholly or mainly employed about the business, and will therefore include inside and outside workers (*d*).

Shop assistants as above defined are not the only persons protected by the Acts. For instance, the regulations as to hours of employment laid down in the Act of 1934, apply not only to young persons who are shop assistants, but to all young persons who are employed in any work ancillary to the business of a shop or in connection with any retail trade or business, wheresoever carried on (*e*). [424]

CONDITIONS OF EMPLOYMENT

Hours of Employment of Shop Assistants.—The only statutory limitations in the working hours of shop assistants as distinct from the hours of opening shops are :

- (i.) the limitation of the working hours of young persons under the age of sixteen years (*f*) ;
- (ii.) the provision as to weekly half-holidays and meal intervals (*g*) ;
- (iii.) the limitation of hours in premises for the sale of refreshments in the Act of 1913, sect. 1, where the occupier of such premises has elected that the provisions of the Act shall apply (*h*) ; and
- (iv.) the provisions as to compensatory holidays for persons employed on Sunday (*i*). [425]

Half-holidays of Shop Assistants.—On at least one weekday in each week a shop assistant must not be employed about the business of a shop after 1.30 p.m. (*k*). This rule will not operate, however, in any week preceding a bank holiday (*l*) if the assistant is not employed on the bank holiday and the weekly half-holiday is given in the bank holiday week in addition to the bank holiday (*m*) ; nor will it operate in the case of a young person (*n*) in any week in which he is not employed as a shop assistant for more than twenty-five hours, or, in the case of the employment of a young person in a theatre, in any week in which he is not employed in the theatre before midday on any day (notwith-

Act of 1913, must accept the wider definition (*Rutherford v. Trust Houses*, [1926] 1 K. B. 321 ; Digest Supp.).

(*d*) Act of 1934, s. 9 (1) ; 27 Halsbury's Statutes 238.

(*e*) See *post*, p. 265 ; *ibid.*, ss. 4, 15 (4) ; 27 Halsbury's Statutes 228, 239.

(*f*) See *post*, Act of 1912, s. 2 ; 8 Halsbury's Statutes 613 ; Act of 1934, s. 1 ; 27 Halsbury's Statutes 226, as amended by the Young Persons (Employment) Act, 1938, Part II ; 31 Halsbury's Statutes 161.

(*g*) See *infra*, Act of 1912, s. 1, Sched. I. ; 8 Halsbury's Statutes 613, 625.

(*h*) See *post*, p. 263.

(*i*) The Shops (Sunday Trading Restriction) Act, 1936, s. 11 (1) ; 29 Halsbury's Statutes 161.

(*k*) Act of 1912, s. 1 ; 8 Halsbury's Statutes 613.

(*l*) "Bank holiday" includes any public holiday or day of public rejoicing or mourning *ibid.* (s. 19 (1) ; 8 Halsbury's Statutes 624). Christmas Day is a weekday and a bank holiday. *Todd Burns & Co., Ltd. v. Dublin Corpn.* (1913), 47 I. L. T. 157 ; 24 Digest 938, b (1).

(*m*) If two bank holidays occur in the same week, no half-holiday need be given in that or the preceding week (*Todd Barnes & Co., Ltd. v. Dublin Corpn.*, *supra*).

(*n*) "Young person" means a person who has not attained the age of eighteen years, but does not include a child whose employment is regulated by the Children and Young Persons Act, 1933 ; 26 Halsbury's Statutes 168 ; Act of 1934, s. 18 ; 27 Halsbury's Statutes 240.

standing that he may be employed also as a shop assistant for more than twenty-five hours in that week) (o).

The occupier of a shop must fix and must specify in a notice in the prescribed form, which must be affixed in the shop in the prescribed manner and time, the day of the week on which his shop assistants are not employed after 1.30 p.m. ; he may fix different days for different assistants (p). [426]

Meal Intervals.—Intervals for meals must be so arranged that no shop assistant is employed for longer than six hours without an interval of at least twenty minutes (q). Where, however, the hours of employment include the hours from 11.30 a.m. to 2.30 p.m., each assistant (except as hereinafter stated) must be allowed not less than three-quarters of an hour for dinner between those hours if he takes the meal in the shop (or a building of which the shop forms part, or to which it is attached) or an interval of a full hour if he takes his meal elsewhere (r). Where the hours of employment include the hours from 4 p.m. to 7 p.m., each assistant must be allowed an interval of not less than half an hour for tea between those hours (s). In the case both of dinner and tea the interval must be allowed during the hours respectively mentioned (t).

The above provisions are subject to the following exceptions :

- (a) On the day of an annual fair and on the market day in towns where a market is held not more than once a week, the dinner interval may be so arranged as to end not earlier than 11.30 a.m., or to commence not later than 2.30 p.m. (s).
- (b) In the case of young persons coming within the same description as those to whom the provisions as to a weekly holiday apply, no such young person may be employed for a longer period than five hours without an interval of at least twenty minutes, or on the day in which the weekly half-holiday falls, for longer than five-and-a-half hours.
- (c) The provisions as to meal intervals do not apply to a shop if the only persons employed as shop assistants are members of the family of the occupier of the shop maintained by him and dwelling in his house (u). [427]

Offences and Penalties.—Non-compliance with the provisions relating to assistants' weekly half-holidays and meal intervals renders the offender liable to a fine of £1, £5 and £10 for the first, second and third and subsequent offences respectively, unless in the case of a shop assistant employed after half-past one o'clock in contravention of the section, the assistant was employed merely for the purpose of serving

(o) Act of 1934, s. 9 (2) ; 27 Halsbury's Statutes 234.

(p) Act of 1912, s. 1 (2) ; 8 Halsbury's Statutes 614. For form of notice and manner and time of fixing, see S.R. & O., 1912, No. 316. This provision does not apply to young persons (Act of 1934, s. 9 (4), (5) ; 27 Halsbury's Statutes 234). The exhibition of notices as regards such persons is regulated by *ibid.*, s. 7 ; 27 Halsbury's Statutes 232.

(q) Act of 1912, s. 1 (3), Sched. I. ; 8 Halsbury's Statutes 614, 625. This interval is in addition to the dinner and tea interval (see H.O. Memorandum, March, 1912).

(r) Where meals are taken in the shop, suitable facilities must be provided, having regard to the circumstances affecting the shop (Act of 1934, ss. 10 (5), 15 (1) ; 27 Halsbury's Statutes 285, 288).

(s) Act of 1912, Sched. I. ; 8 Halsbury's Statutes 625.

(t) *Hutchison v. Calnning* (1926), S.C. (J.) 110 ; Digest (Supp.).

(u) Act of 1912, s. 1 (3) ; 8 Halsbury's Statutes 614.

a customer whom he was serving at that time or, where the time of closing the shop was also 1.30 p.m., that he was merely serving customers who were in the shop at that time (a). [428]

Refreshment Houses.—The keeper of premises for the sale of refreshments—whether licensed for the sale of intoxicants or not—may adopt an alternative scheme to that of the assistants' half-holiday as laid down by the general rule (b). Such scheme will apply to all assistants employed on the premises wholly or mainly in connection with the sale of intoxicating liquors or refreshments for consumption on the premises (c). The scheme which may be adopted is as follows :

No assistant may be employed for more than sixty-five hours in any week, exclusive of meal times. Intervals for meals are to be allowed to every such assistant—on a half-holiday not less than three-quarters of an hour, and on every other day not less than two hours ; and no assistants may be employed for more than six hours without being allowed an interval of at least half an hour (d). Provision must be made to secure every such assistant :

- (1) thirty-two whole holidays on a week-day (two half-holidays on a week-day are equivalent to one whole holiday on a week-day) in every year, of which two are given within the currency of each month, and which comprises a holiday on full pay of not less than six consecutive days ;
- (2) twenty-six holidays on Sundays, so distributed that at least one out of every three consecutive Sundays is a whole holiday (e).

The occupier is to affix and maintain in a conspicuous position on the premises a notice in the prescribed form signifying his adoption of the above scheme (f). [429]

HEALTH AND COMFORT OF SHOP WORKERS

The undermentioned provisions apply to wholesale shops and warehouses as well as retail shops in which any persons, whether juveniles or adults, are employed.

Ventilation, Temperature and Lighting of Shops.—In every part of a shop in which persons are employed about the business of the shop, suitable and sufficient means of ventilation, and for the maintenance of a reasonable temperature (g) and of lighting (h), must be provided, and suitable and sufficient ventilation and a reasonable temperature must be maintained (g), and every such part of a shop must be kept suitably and sufficiently lighted (h). The sanitary authority (i) is

(a) Act of 1912, s. 1 (4) ; 8 Halsbury's Statutes 614.

(b) Act of 1913, s. 1 ; *ibid.*, 628.

(c) E.g. see *Rutherford v. Trust Houses, Ltd.*, [1926] 1 K. B. 321 ; Digest (Supp.) (where a waiter was held to be a "shop assistant"). And see notes (t) and (a), p. 260 *ante*,

(d) This does not apply if the only persons employed as assistants are members of the family of the occupier of the shop maintained by him and dwelling in his house ; Act of 1913, s. 1 (1) (e) ; 8 Halsbury's Statutes 628.

(e) *Ibid.*, s. 1 (1) (b) ; *ibid.*

(f) For prescribed form, see Regulations, 1913 ; S.R. & O., 1913, No. 250.

(g) Act of 1934, s. 10 (1) ; 27 Halsbury's Statutes 285.

(h) *Ibid.*, s. 10 (3) ; *ibid.*, 235.

(i) For definition, see *ibid.*, s. 15 (1) ; *ibid.*, 288.

responsible for the enforcement of these provisions (*k*). Any inspector appointed by such authority has, for the purposes of his powers and duties in relation to shops, the powers conferred in relation to factories and workshops on inspectors (*l*).

Notwithstanding that the provisions of the Shops Act, 1934, relating to ventilation and temperature of shops and to sanitary conveniences are not enforceable by local authorities under the provisions of the Shops Act, 1912, it is nevertheless the duty of inspectors appointed under that Act to take note of and if necessary report to the sanitary authority for the district any contravention of the provisions of the Act of 1934 (*m*). [430]

Sanitary Conveniences and washing Facilities.—In every shop, unless exempted (see *infra*) suitable and sufficient (*n*) sanitary conveniences (*o*) and washing facilities (*p*) must be provided. In the case of conveniences, the sanitary authority (*q*) and in the case of washing facilities, the local authority, is the authority to enforce these provisions (*r*).

The appropriate authority may grant a certificate of exemption from the provisions if satisfied (1) that by reason of restricted accommodation or other special circumstances the grant of a certificate is reasonable in the circumstances; and (2) that suitable and sufficient conveniences or washing facilities (as the case may be) are otherwise conveniently available. A certificate must be withdrawn if the authority at any time cease to be satisfied, but the occupier has a right of appeal from the withdrawal to the county court (*s*). [431]

Facilities for taking Meals.—Where persons employed about the business of a shop take any meals in the shop there must be provided and maintained suitable and sufficient facilities for the taking of those meals (*t*). [432]

Enforcement and Penalties.—Where there has been a contravention of the provisions relating to the health and comfort of shop workers, the appropriate authority must serve a notice on the owner or occupier, as the authority may decide, and require him to take, within the time limited in the notice, the action specified in the notice for the purpose of securing compliance with the provision; and if any person fails to comply he is liable to a fine of £20 or in the case of a second or subsequent conviction in respect of the same requirement to a fine not exceeding £50 or £5 per day since the first conviction, whichever is the greater (*u*). [433]

Seats for female Shop Assistants.—In every room of a shop where female shop assistants are employed in the serving of customers, the occupier must provide, behind the counter or in some other suitable place, not less than one seat to every three female assistants employed

(*k*) Act of 1934, s. 13 (1), (3); 27 Halsbury's Statutes 237.

(*l*) *Ibid.*, s. 13 (3); *ibid.*

(*m*) *Ibid.*, s. 13 (4); *ibid.*, 238.

(*n*) This means having regard to the circumstances and conditions affecting that shop or part, *ibid.*, s. 15 (1); *ibid.*, 239.

(*o*) *Ibid.*, s. 10 (2); *ibid.*, 235.

(*p*) *Ibid.*, s. 10 (4); *ibid.*, 235.

(*q*) *Ibid.*, s. 15 (1); *ibid.*, 238.

(*r*) *Ibid.*, s. 13 (1), (3); *ibid.*, 237.

(*s*) *Ibid.*, s. 10 (6); *ibid.*, 235.

(*t*) *Ibid.*, s. 10 (5); *ibid.*

(*u*) *Ibid.*, s. 10 (7); *ibid.*

in each room (*a*), and the employer must permit such female assistants to make use of the seats whenever the use thereof does not interfere with their work, and give and keep constantly exhibited or supply to each person affected notice (in the prescribed form) informing them that they are intended to do so (*b*).

The penalties for offences against the rules as to the provision of seats are for the first offence a fine not exceeding £3, for second or subsequent offence a fine not less than £1, and not exceeding £5 (*c*). [484]

Expenses of making Provision for Health and Comfort.—Either the owner or the occupier of a shop who has incurred or is about to incur any expense in carrying out these requirements for health and comfort, and who alleges that all or part of the expenses should be borne by any other person having an interest in the premises, may apply to the county court, which may make such an order as to the expenses or their apportionment as seems just and equitable. The court must take account of, but may override, the terms of any contract between the parties (*d*). [485]

EMPLOYMENT OF YOUNG PERSONS

The law relating to the employment of young persons under the age of eighteen in shops and warehouses is contained in the Act of 1934, the Young Persons (Employment) Act, 1938, Part II. (*dd*) and the Shops Regulations, 1939 (*e*). The Acts regulate the employment of young persons employed about the business of a shop or in retail trade elsewhere, and in particular limits the normal hours of employment of such young persons to forty-eight hours a week, or forty-four hours in the case of a young person under sixteen.

Shops to which the Provisions apply.—The Act applies to three classes of premises :

- (a) Retail shops.
- (b) Wholesale shops—premises occupied by a wholesale dealer where goods are kept for sale wholesale to customers resorting to the premises.
- (c) Warehouses, occupied by retail traders or wholesale dealers for the purposes of their trade, whether or not they are connected with a retail or wholesale “shop” (*f*). [486]

Young Persons to whom the Provisions apply.—Subject to the exceptions hereinafter mentioned the Act applies to all young persons employed about the business of a shop (*g*).

A “young person” means any person who has not attained the age of eighteen years, except children of school age, whose employment is regulated by the Children and Young Persons Act, 1933 (*h*).

(*a*) Act of 1912, s. 3 (1); 8 Halsbury's Statutes 615.

(*b*) Act of 1934, s. 12; 27 Halsbury's Statutes 236: Shops Regulations, 1939, S.R. & O., 1939, No. 1841, para. 6.

(*c*) Act of 1912, s. 3 (2); 8 Halsbury's Statutes 615.

(*d*) Act of 1934, s. 11; 27 Halsbury's Statutes 236. The court must consider all the circumstances of the case. See *Horner v. Franklin*, [1905] 1 K. B. 479, *per ROMER, L. J.*, at p. 488; 24 Digest 914, 98.

(*dd*) 31 Halsbury's Statutes 161.

(*e*) 27 Halsbury's Statutes 226, 241.

(*f*) Act of 1934, s. 15 (1); 27 Halsbury's Statutes 238.

(*g*) *Ibid.*, s. 1; *ibid.*, 226.

(*h*) *Ibid.*, s. 15 (1); *ibid.*, 239. (For Children and Young Persons Act, 1933, see 26 Halsbury's Statutes 168).

"Employment about the business of a shop" includes any employment in the service of the occupier upon any work, whether within the shop or outside it, which is ancillary to the business carried on at the shop (*i*).

The provisions cover a wide range of employees, including all young persons employed in connection with the service of customers, the receipt of orders, the handling, dispatch, collection or delivery of goods, in clerical work, in the service or preparation of food in a restaurant, or in carrying messages, or in cleaning or maintenance work, and even though they receive no remuneration (*k*), or are employed in retail trade elsewhere than in shops (*l*). 【437】

Exceptions.—Certain kinds of employment are excepted :

- (a) Employment outside the premises of a wholesale shop or warehouse occupied by a wholesale dealer, other than employment in the collection or delivery of goods, or in attendance upon customers or in carrying messages or running errands (*m*).
- (b) Employment in a factory or workshop of young persons whose hours are regulated by the Factory Acts, unless they are also employed for part of their time about the business of a shop (*n*). 【438】

Hours of Employment of Young Persons. Normal maximum working Hours.—Subject to the exceptions set out below no young person may be employed about the business of a shop for more than the normal working period (*o*).

Overtime.—On occasions of exceptional pressure young persons between the ages of sixteen and eighteen may be employed overtime, subject to the following conditions :

- (a) Overtime may not be worked in any shop in more than six weeks, whether consecutive or not, in any year (*p*). Any week in which any young person works any overtime will be counted as a week.
- (b) No individual young person may be employed overtime :
 - (i.) in any year for more than fifty working hours ;
 - (ii.) in any week for more than twelve working hours (*q*)

No young person under the age of sixteen may in any circumstances be employed overtime.

Special provisions applying to young persons of sixteen to eighteen in the catering trade and in connection with the sale of supplies or accessories for aircraft, motor vehicles and cycles are referred to below.

Mixed Employment. (a) *Mixed Employment in the same Week.*—Where a young person employed about the business of a shop is also employed in any week about the business of any other shop, or in a

(*i*) Act of 1934, s. 15 (4) ; 27 Halsbury's Statutes 239.

(*k*) *Ibid.*, s. 15 (2) ; *ibid.*

(*l*) *Ibid.*, s. 4 ; 27 Halsbury's Statutes 228.

(*m*) *Ibid.*, s. 15 (4) ; *ibid.*, 239.

(*n*) *Ibid.*, s. 15 (5) ; *ibid.*, 240, as amended by the Young Persons (Employment) Act, 1938 ; 31 Halsbury's Statutes 162.

(*o*) See p. 265, *ante*.

(*p*) *Ibid.*, s. 1 (2) (a) ; *ibid.*, 227.

(*q*) *Ibid.*, s. 1 (2) (b) ; *ibid.* But see Young Persons (Employment) Act, 1938, s. 11 (2) ; 31 Halsbury's Statutes 162, as to averaging hours of such young persons at Christmas.

factory or workshop, the whole of such employment is to be reckoned as working hours. An occupier, however, shall not be penalised for a contravention resulting from time worked for another employer of which he was not aware and could not with reasonable diligence have ascertained (r).

(b) *Mixed Employment on the same Day.*—Where a young person has to the knowledge of the occupier been employed on any day in a factory or workshop and is subsequently on the same day employed about the business of a shop, the working hours for that day in both employments added together must not exceed the daily maximum permitted by the Factory and Workshops Acts (s). [439]

Definitions.—“Working hours” means the time during which the persons employed are at the disposal of the employer, exclusive of any intervals allowed for rest and meals (t).

“Week” means the period between midnight on Saturday night and midnight on the succeeding Saturday night (t).

“Year” means the period between midnight on the last Saturday night in December and midnight on the last Saturday night in the next month of December (t). [440]

Power to regulate Employment in Spells.—The Secretary of State may make regulations to prevent the hours of employment of young persons from being so divided into spells as to deprive them of reasonable opportunities for instruction and recreation (u). No such regulations have been made. [441]

Restrictions on night Employment.—A young person must in every period of twenty-four hours between midday and midday be allowed an interval of at least eleven consecutive hours, and this interval must include the hours between 10 p.m. and 6 a.m. (a).

In the case of male young persons between the ages of sixteen and eighteen employed between 5 a.m. and 6 a.m. in connection with the collection or delivery of milk, bread or newspapers, the eleven hours interval need not include that hour, but must include the hours between 10 p.m. and 5 a.m. (a). Modifications are also provided in the case of the catering trade and theatres. [442]

Extensions to retail Trading elsewhere than in Shops.—The foregoing provisions and those relating to the keeping of records, apply to the employment of young persons in connection with any retail trade or business in any place not being a shop, e.g. a travelling van or a bakery, whether or not they receive any reward for their labour (b); and they must also be allowed a weekly half-holiday and the statutory meal intervals. [443]

Catering Trade.—The two following provisions apply only to young persons between the ages of sixteen and eighteen wholly or mainly employed in connection with the business of serving meals, intoxicating liquor or refreshments, for consumption on the premises.

(r) Act of 1934, s. 1 (3); 27 Halsbury's Statutes, 227.

(s) *Ibid.*, s. 1 (4); *ibid.*; Factories Act, 1937, Part VI.; 30 Halsbury's Statutes 251.

(t) Act of 1934, s. 15 (1); 27 Halsbury's Statutes 239.

(u) *Ibid.*, s. 2; *ibid.*, 228.

(a) *Ibid.*, s. 3 (1); *ibid.*

(b) *Ibid.*, ss. 4, 15 (1); *ibid.*, 228, 238.

Averaging of Hours over a Fortnight.—The hours of the young persons may be averaged over a fortnight, to enable catering establishments to meet the needs of periods of pressure, e.g. at holiday seasons, without having recourse to overtime.

The arrangement is as follows :

An occupier wishing to adopt the averaging system for a particular fortnight must exhibit a notice (in the prescribed form) (c) not later than noon on the Saturday preceding the commencement of the fortnight, and keep it exhibited during the fortnight. This having been done, the hours of the young persons may be averaged over the fortnight, provided (a) that the total hours worked during the fortnight must not exceed ninety-six; and (b) that the hours worked in either week must not exceed sixty.

The overtime provisions do not apply during the fortnight and no hours may therefore be worked in excess of the fortnightly total, so that if, for example, sixty hours are worked in one week, the hours in the other week must in no circumstances exceed thirty-six.

This averaging arrangement may not be adopted for more than twelve periods of a fortnight each beginning in any calendar year (d).

Exemption from the Limitation of Overtime to six Weeks in the Year.—Shops in which a catering business is carried on are exempted from the limitations under which overtime is limited to six weeks in the year in any shop. The young persons may therefore work overtime in any week of the year in which an averaging arrangement is not in force, provided that the overtime worked by the individual in any period of two consecutive weeks shall not exceed eight working hours.

In an establishment in which other business is carried on in addition to the catering business, the weeks in which overtime is worked by young persons wholly or mainly employed in the catering business will not count for the purposes of the six weeks' limitation in its application to the rest of the establishment. Where, however, an occupier prefers instead to accept the limitation of overtime to six weeks to get the benefit of the higher overtime allowance of twelve hours a week, he may elect that the exemption shall not apply to his shop (e).

In such case he must give notice to the local authority in the prescribed form (c) and exhibit a copy of the notice in his shop, at least seven days before it takes effect. The notice must be given not later than seven days before the commencement of any year and will take effect on the first day of that year. A notice cannot therefore be given for a period less than a complete year, and the occupier of a shop in which a catering business is carried on has, therefore, to decide before the commencement of any year, whether he wishes to contract out of the exemption by giving the notice (B (1)). If he does not give such a notice, the exemption, with its qualifying conditions, will apply automatically to his shop. When an occupier desires to withdraw the notice, he may give (not later than seven days before the commencement of any year) notice of withdrawal to the local authority in the

(c) See Shops Regulations, 1939, S.R. & O., 1939, No. 1841.

(d) Act of 1934, s. 5 (1); *ibid.*, 229.

(e) *Ibid.*, s. 5 (2); *ibid.* The limitation of the annual amount of overtime permissible for the individual remains unaffected in either event.

prescribed form (Notice B (2)), to take effect on the first day of that year (g).

Employment up to Midnight in the Service of Meals.—In the case of male young persons between the ages of sixteen and eighteen whose employment is wholly or mainly in connection with the business of serving meals for consumption on the premises, employment is permitted for any period between 10 p.m. and midnight during which they are wholly employed in connection with the business of serving meals. Otherwise the restrictions on night employment apply, i.e. they may not be employed between midnight and 6 a.m. and must have their eleven consecutive hours' rest in the twenty-four hours between midday and midday. If, therefore, they work up to midnight, they must not commence work again before 11 a.m. on the next day (h).

Catering Establishments which have adopted the Act of 1913.—In any shop where the 1913 Act has been applied (i), the weekly limit of sixty-five hours a week provided in that Act will cease to have effect as regards the young persons to whom the limitation of hours imposed by the Act of 1934 applies. Otherwise the provisions of the Act of 1913 will (where it has been adopted) remain in force unaffected by the Act of 1934 (k).

Residential Hotels.—A “residential hotel” means premises used for the reception of guests and travellers desirous of dwelling or sleeping therein (l).

The young persons employed in such hotels to whom the Act applies are (1) young persons who are “shop assistants” as defined in the Act of 1912 (m); or (2) where the Act of 1913 has been adopted, young persons wholly or mainly employed in connection with the business of selling intoxicating liquors or refreshments for consumption on the premises (n). 444

Accessories for Aircraft, Motor Vehicles and Cycles. Averaging of Hours.—Special provisions for the averaging of hours over a period of three weeks (enabling the occupier to work on a series of long and short weeks) apply where the business of serving customers with supplies or accessories for aircraft, motor vehicles or cycles sold for immediate use is the sole or principal retail business of the shop. The special provisions apply to young persons between the ages of sixteen and eighteen employed in connection with that business, but where the business is not the principal retail business carried on in the shop, the provisions apply only to young persons between such ages who are wholly or mainly employed in connection with the said business.

The system is not intended to meet special periods of pressure (as in the case of the somewhat similar provision for the catering trade) but for adoption as a standing arrangement.

The arrangement is as follows :

Where the occupier wishes to adopt the averaging system, he must

(g) *Ibid.*, para. 2 (3); *ibid.*, 242.

(h) Act of 1934, s. 5 (4); 27 Halsbury's Statutes 230.

(i) Act of 1913, s. 1; 8 Halsbury's Statutes 628.

(k) Act of 1934, s. 5 (5); 27 Halsbury's Statutes 230.

(l) *Ibid.*, s. 15 (1); *ibid.*, 238.

(m) S. 19 (1); 8 Halsbury's Statutes 624.

(n) Act of 1934, s. 5 (6); 27 Halsbury's Statutes 231. See notes (t) and (a), p. 260, *ante*.

give notice to the local authority in the prescribed form (Notice D (1)) (o), and specify the scheme of hours to be worked. A copy must be exhibited in his shop. The hours specified in the notice in respect of each week become the normal maximum working hours. Overtime may be worked, within the special limits specified below. The following conditions must be complied with :

- (i.) The hours worked in any week, including overtime, must not exceed 54.
- (ii.) The total working hours (excluding overtime) in any period of three consecutive weeks must not exceed 144.
- (iii.) The amount of overtime worked in any period of three consecutive weeks must not exceed 12 hours (p).

An occupier may vary the hours by giving a fresh notice in the form D (1) and (2) withdrawing the previous notice and specifying new hours, or he may revert to the normal maximum working hours of forty-eight by giving a notice of withdrawal in the form prescribed by the Regulations (Form D (2)); but in either case a period of six months must elapse from the date on which the notice withdrawn took effect (o).

Exemption from the Limitation of Overtime to six Weeks in the Year.—As in the case of the catering trade shops in which there is carried on the sale of supplies or accessories for aircraft, etc., are, unless the occupier elects otherwise, exempted from the limitation of overtime to six weeks in the year in any shop, and young persons may be employed overtime in any week of the year; but overtime is limited to twelve hours in any period of three consecutive weeks, the same limitation as applies where an averaging system is in operation. In other respects, the provisions as to exemption are identical with those relating to the similar exemption for the catering trade, except that the prescribed forms of notice and notice of withdrawal are Notices C (1) and C (2) respectively (q). **[445]**

Records.—Records of hours of employment must be kept by every occupier of a shop who employs young persons about the business of his shop. Two alternative methods are provided : An occupier may either : (i.) keep a record of the actual hours worked and intervals allowed ; or (ii.) exhibit a notice specifying the daily hours and intervals, in which case he need only keep a record of time worked outside those hours (r).

The records in respect of any year must be preserved in the shop to which they relate for a period of not less than six months from the end of that year (o). **[446]**

Abstract of the employment Provisions of the Act.—Both the occupier of any retail shop or warehouse occupied by a small trader and the occupier of any wholesale shop or warehouse occupied by a wholesale dealer or merchant, about the business of which young persons are employed, must exhibit a notice in the prescribed form

(o) See Shops Regulations, 1939, S.R. & O., 1939, No. 1841.

(p) Act of 1934, s. 6 (1); 27 Halsbury's Statutes 231.

(r) Act of 1934, s. 7; *ibid.*, 232. For prescribed forms of record and notice, see the Shops Regulations, 1939, *supra*.

(embodying an abstract of the Act), but such notices need not be exhibited in places other than shops or warehouses (*t*). [447]

Theatres.—The foregoing provisions do not apply to the employment of persons in or about a theatre, except in relation to young persons employed wholly or mainly in connection with any retail trade or business carried on in the theatre (*u*). As regards the application to theatres of the provisions relating to the weekly half-holiday see *infra*.

Night Employment.—Where a performance in a theatre begins before and ends after 10 p.m., a young person between sixteen and eighteen may be employed up to the time at which the performance ends. Otherwise the restrictions upon night employment apply, *i.e.* the young person must not be employed between the end of the performance and 6 a.m. and must be allowed an interval of at least eleven consecutive hours between midday on one day and midday on the next (*u*). [448]

Weekly Half-holidays.—Every young person who is wholly or mainly employed about the business of a wholesale or retail shop or warehouse, or in connection with any retail trade or business carried on elsewhere, for more than twenty-five hours in any week, must be given in that week the weekly half-holiday provided for "shop assistants" by the Act of 1912 (*a*).

In the case of young persons employed in theatres to whom the Act applies the employer is not required to give a weekly half-holiday unless the young person is employed in the theatre before midday on any day in the week (*b*). [449]

Intervals for Meals.—Every young person wholly or mainly employed about the business of a wholesale or retail shop or warehouse, or in connection with any retail trade or business carried on elsewhere, must be allowed the meal intervals provided for "shop assistants" by the Act of 1912, but in the case of young persons the period which may be worked without an interval is reduced (*c*).

The provisions as to meal intervals, however, do not apply to a shop where the only persons employed are members of the occupier's family, maintained by him and dwelling in his house (*d*). [450]

CLOSING OF SHOPS

Preliminary.—The closing of shops is regulated either by the Shops Act of 1928 (*e*) or by closing orders made by local authorities under sect. 5 of the Act of 1912 (*f*) or the Act which preceded it, the Shop Hours Act, 1904 (*g*), provided that such orders are not inconsistent with the Act of 1928 (*h*).

(*t*) Act of 1934, s. 7 (2), (3); 27 Halsbury's Statutes 233.

(*u*) *Ibid.*, s. 8; *ibid.* The expression "theatre" includes any cinema, music hall or other similar place of entertainment. *Ibid.*, s. 15 (1); 27 Halsbury's Statutes 239.

(*a*) *Ibid.*, s. 9 (1); *ibid.*, 233.

(*b*) *Ibid.*, s. 9 (2); *ibid.*, 234.

(*c*) S. 9 (4), (5); *ibid.*

(*d*) Act of 1912, s. 1 (3); 8 Halsbury's Statutes 614.

(*e*) 8 Halsbury's Statutes 647.

(*f*) *Ibid.*, 617.

(*g*) Repealed by Act of 1912, s. 22; *ibid.*, 624.

(*h*) See Act of 1928, s. 4; *ibid.*, 648.

General closing Hours.—Every shop (with certain exceptions hereinafter mentioned) must be closed for the serving of customers not later than 9 p.m. on the "late day" and 8 p.m. on other days of the week. Such hours are known as "general closing hours." The "late day" is Saturday, unless the local authority by order fix some other day; the order may fix the same day for all shops, or different days for different classes of shops or for different parts of the district or for different periods of the year; the order must fix a day other than the weekly half-holiday (i).

Transactions permitted after closing Hours.—The following transactions are exempted (j) :

- (1) The sale after the closing hour of :
 - (a) meals or refreshments (including table waters, sweets, chocolates, sugar confectionery and ice-cream) for consumption on the premises, or (in the case of meals or refreshments sold on railway premises) for consumption on the trains: Provided that (i.) in the case of canteens attached to and situated within or in the immediate vicinity of any works, if persons are employed at such works after the closing hour, and the canteen is kept open only for the use of such persons, meals or refreshments may be sold after the closing hour for consumption anywhere within the works premises; and (ii.) for the purposes of the foregoing provisions, tobacco supplied at a meal for immediate consumption shall be deemed to form part of the meal;
 - (b) newly-cooked provisions (k) and cooked or partly cooked tripe to be consumed off the premises;
 - (c) intoxicating liquors to be consumed on or off the premises;
 - (d) tobacco, table waters or matches on licensed premises during the hours during which intoxicating liquor is permitted by law to be sold on the premises;
 - (e) tobacco, matches, table waters, sweets, chocolates or other sugar confectionery or ice-cream, at any time during the performance in any theatre, cinema, music hall or other similar place of entertainment, so long as the sale is to a *bona fide* member of the audience, and in a part of the building to which no other members of the public have access;
 - (f) medicine or medical or surgical appliances so long as the shop is kept open only for such time as is necessary for serving the customer;
 - (g) newspapers, periodicals and books from the bookstalls of such terminal and main line stations as may be approved by the Secretary of State;
 - (h) aircraft, motor or cycle supplies or accessories for immediate use, so long as the shop is kept open only for such time as is necessary for serving the customer;
 - (i) victuals, stores or other necessaries required by any naval, military or air force authority for His Majesty's Forces or required for any ship on her arrival at or immediately before her departure from a port, so long as the shop is kept open only for such time as is necessary for serving the customer.

(i) Act of 1928, s. 1 (2); 27 Halsbury's Statutes 647.

(j) *Ibid.*, s. 1 (3), Sched. I.; *ibid.*, 647, 651.

(k) This includes newly baked bread; see *L.C.C. v. Davis*, [1938] 2 All E. R. 764.

(2) The transaction after the closing hour of any post office business (l).

Sale of Confectionery.—The general closing hours for the trade of selling table waters, sweets, chocolates or other sugar confectionery or ice-cream are 10 p.m. on the late day and 9.30 p.m. on any other day. The local authority may by order substitute in their area or in any part of it an earlier hour not earlier than 8 p.m. (m) if satisfied that the occupiers of a majority of the shops to be affected desire it (n).

Sale of Tobacco.—In the trade of selling tobacco or smokers' requisites the local authority may substitute in their area or any part of it later hours than the general closing hours not later than 10 p.m. on the late day and 9.30 p.m. on any other day, if satisfied that the occupiers of at least two-thirds in number of the shops to be affected desire it (o).

Exhibitions, Shows, etc.—Where a retail trade or business is carried on at an exhibition or show, the local authority by order may substitute for the regular closing hours (whether the general closing hours or fixed by closing order) later hours not later than 10 p.m., if satisfied that the retail trade in question is merely subsidiary to the main purpose of the exhibition (p). The order must specify conditions for securing that shop assistants affected are not employed in or about the retail trade for more than such number of hours as may be specified in the order (q).

Holiday Resorts and sea fishing Centres.—In places frequented as holiday resorts or where sea fishing is principally carried on during certain seasons, the local authority, on application, may by order (which may apply to the whole or any part of their area and to all or any class of shops) substitute, for a period not exceeding an aggregate of four months in any year, later hours, if satisfied that the occupiers of the majority of the shops to be affected desire it (r). The order must specify conditions for securing that shop assistants affected are not employed for more than a specified number of hours. The order may also suspend the operation of any closing order (s).

Any shop assistant who in consequence of an order as above is employed in or about the business of a shop for extra hours (*i.e.* hours in excess of the customary working day) (t) is entitled to corresponding holidays with full wages (u).

If, at the termination of his employment or at the end of the year (whichever first occurs), the employer has failed to give any holiday or wages to which the assistant is entitled, the latter may recover as a debt the following amount: for every day's holiday withheld one-sixth of the highest weekly rate of wages paid to him during the year or that part of the year during which he has been employed in the shop (x).

(l) Act of 1928, Sched. I.

(m) See *Kenyon v. Street*, [1931] 1 K. B. 305; Digest (Supp.).

(n) Act of 1928, s. 2; 8 Halsbury's Statutes 648.

(o) *Ibid.*, s. 3; *ibid.*, 648.

(p) *Ibid.*, s. 5 (1); *ibid.*, 649.

(q) *Ibid.*, s. 5 (2); *ibid.*.

(r) *Ibid.*, s. 6 (1); *ibid.*

(s) *Ibid.*, s. 6 (2); *ibid.*

(t) *Ibid.*, s. 6 (4); *ibid.*, 650.

(u) *I.e.* at a rate equivalent to the rate to which he is entitled immediately before the holiday, *ibid.*, s. 6 (4). For method of calculating such holidays, see Sched. II.; *ibid.*, 652.

(x) Act of 1928, s. 6 (3); *ibid.*, 649.

Christmas Season and special Occasions.—The Secretary of State has power to make orders suspending the general closing hours during the Christmas season or in connection with other special occasions. The order may be for such periods as the Secretary of State thinks fit. Any closing order under the Shops Act, 1912, is then also suspended, unless otherwise directed (*a*).

In connection with any special occasion (e.g. local fête days) a local authority may make an order suspending the general closing hours and any closing order made by the local authority, for such period as they think fit. Such suspensions by order of the local authority must not exceed seven days in any year (*b*).

Retail Trading elsewhere than in Shops.—Persons carrying on retail trade or business elsewhere than in shops are in the same position as shop-keepers with regards to the closing hour (*c*). The provisions are the same as in the case of the early closing day. If there is a closing order containing exemptions and conditions, these conditions apply to persons trading elsewhere than in shops as they do to shop-keepers. Further the attendance of a barber on a customer at his private residence, an auction sale of private effects in a private dwelling-house and the sale of newspapers are exempted from the prohibition (*d*).

Mixed Trades.—Where a shop carries on several trades any of which is of a class which by itself would entitle the shop to be open after the closing hours—whether the general closing hours or those fixed by order—the shop may be kept open for the purposes of such trade only. This is subject to any conditions that may be prescribed by the Secretary of State (in the case of a general closing order), or specified in the local authority's order (*e*).

Penalties and Savings.—Any shop-keeper contravening or failing to comply with any of the provisions as to closing hours—whether general closing hours or closing hours fixed by order—is guilty of an offence punishable as follows : first offence, a fine not exceeding £5 ; second or subsequent offence, a fine not exceeding £20 (*f*). But nothing in the Act of 1928, or in a closing order under the Act of 1912, prevents the serving of a customer where it is proved that the customer was in the shop before the closing hour, or that reasonable grounds existed for believing that the article supplied was required in case of illness or the carrying out of certain specially exempted transactions (*g*). **[451]**

(*a*) Act of 1928, s. 7 (1); *ibid.*, 650.

(*b*) *Ibid.*, s. 7 (2); *ibid.*

(*c*) See *Bangor U.D.C. v. Hill* (1913), 77 J. P. Journal 209 (van trading); *Cowden v. Mackay*, [1914] 3 K. B. 109; 24 Digest 932, 220 (sale at private house after shop closed); and *Willesden U.D.C. v. Morgan*, [1915] 1 K. B. 349; 24 Digest 933, 222 (sale from automatic machine outside shop held not trading elsewhere than in a shop).

(*d*) Act of 1912, s. 9; 8 Halsbury's Statutes 619; Act of 1928, s. 9, Sched. III.; 8 Halsbury's Statutes 651, 652.

(*e*) Act of 1912, s. 10 (1), added by Act of 1928, s. 9, Sched. III.

(*f*) Act of 1928, s. 8; 8 Halsbury's Statutes 650.

(*g*) *Ibid.*, s. 1 (3); *ibid.*, 647. The shop-keeper may not collect persons on the premises before the closing hour in order that after the closing hour he might invite them to purchase (*Salford Cattle Market Salerooms, Ltd. v. Osborne* (1923), 129 L. T. 686; 24 Digest 931, 211; *Gordon v. Somerville* (1928), S. C. (J.) 45; Digest (Supp.)). See next note.

CLOSING ON WEEKLY HALF-HOLIDAYS

General Provisions.—Every shop (with certain exceptions mentioned below) must be closed for the serving of customers not later than one in the afternoon on one weekday in every week (*h*). [452]

Order by Local Authority.—The local authority may by order fix a day on which shops are to be so closed, which may be the same day for all shops; or different days for different classes of shops, or for different parts of the area, or for different periods of the year; but where the order fixes a day other than Saturday, an option must be given to shop-keepers to close on Saturday instead, and where the order fixes a Saturday, an option must be given to shop-keepers to close upon some other day specified in the order. In either case where the shop-keeper avails himself of the option he must put up a notice to that effect in the shop (*i*). No form of notice is prescribed. [453]

Procedure for making Order.—Before making an order the local authority must institute an inquiry, to satisfy themselves that the occupiers of a majority of each class of shop affected approve the order (*k*). For this purpose, the local authority must give notice of intention in the prescribed form to make an order and take a vote upon a register prepared in the prescribed manner (*l*).

An occupier of any shop, unless and until the local authority has made an order as above affecting his shop, must specify by a notice affixed in his shop, the day of the week on which the shop will close by 1 p.m. The specified day may not be changed by the occupier oftener than once in every three months (*m*). [454]

Shops with more than One Business.—A shop where several trades are carried on, any of which by itself would entitle the shop to be open after the closing hour on the early closing day, may be open for the carrying on of such trade solely, subject to prescribed conditions (*n*). After the hours of closing on the day of the weekly half-holiday, whether fixed by the occupier or by an order made by a local authority, there must be exhibited in some conspicuous place in the interior and on the exterior of the shop a notice in the prescribed form. [455]

Trades or Businesses which are Exempt.—Shops where only the following trades or businesses are carried on are exempted from the obligation to close early on one weekday. The sale by retail of intoxicating liquors; refreshments, including the business carried on at a railway refreshment room; motor, cycle and aircraft supplies and accessories to travellers; newspapers and periodicals; meat, fish, cream, bread, confectionery, fruit, vegetables, flowers and other

(*h*) Act of 1912, s. 4 (1); 8 Halsbury's Statutes 615. Where a customer enters the shop and attendance upon him begins before the closing hours, no offence is committed if he remains and is attended to after the prescribed hour (*Moore v. Tweedale*, [1935] 2 K. B. 163; Digest (Supp.); "permanent waving" lasting 4 hours).

(*i*) Act of 1912, s. 4 (2); 8 Halsbury's Statutes 615.

(*k*) S.R. & O., 1912, No. 316, para. 4.

(*l*) See *ibid.* No vote, however, is necessary if the local authority have received an application in writing purporting to be signed by the majority of occupiers affected.

(*m*) Act of 1912, s. 4 (3); 8 Halsbury's Statutes 616.

(*n*) *Ibid.*, s. 10 (1A), added by s. 9 and Sched. III. of Act of 1928; 8 Halsbury's Statutes 620, 651, 652. See s. 5, Sched. IV., S.R. & O., 1912, No. 316.

articles of a perishable nature (*o*) ; tobacco and smokers' requisites ; medicines and medical and surgical appliances ; the business carried on at a railway bookstall on or adjoining a railway platform ; any retail trade carried on at an exhibition or show, if the local authority certify that such retail trade is subsidiary or ancillary only to the main purpose of the exhibition or show (*p*).

The local authority may by order make an early closing day compulsory for shops of any exempted class, if satisfied that the occupiers of at least two-thirds of the shops of that class approve the order. The order is made and revocable in the same manner as a closing order (*q*). [456]

Exemption by Order in particular Cases.—The local authority may exempt any particular class of shops in any area, if satisfied that a majority of those shops are in favour of exemption from the closing on weekly half-holidays, either wholly or by substitution of an hour not later than 2 p.m. The local authority (unless they consider the area affected unreasonably small) must ascertain the wish of such occupiers, and if satisfied that a majority or, in case of a vote, that at least one-half of the votes recorded, are in favour of exemption, must make an order exempting the shops of that class within the area either wholly or in part (*r*).

Where a shop is closed during the whole of a bank holiday, and that day is not the weekly half-holiday, the occupier may keep the shop open to customers after the closing time fixed under the order on the half-holiday either immediately before or immediately after the bank holiday (*s*). [457]

Holiday Resorts.—In places frequented as holiday resorts during certain seasons, the obligation to close shops on weekly half-holidays may, by order, be suspended for a period of not more than four months, in any year (*t*). The order may apply to the whole area or to part of the area and to all shops or shops of any class within that area or part (*u*).

Where such suspension is in force, the provision as to non-employment of shop assistants after half-past one on one day in each week does not apply if the occupier satisfies the local authority that it is his practice to allow his assistants a fortnight's holiday on full pay in every year, and keeps a notice to that effect affixed in his shop (*a*). [458]

Post Office Business.—Shops where post office business is carried on in addition to any other business are subject to the following exceptions. If the shop is a telegraph office, there is no obligation to close on the weekly half-holiday, so far as the transaction of postal business is

(*o*) The natural meaning of confectionery is "an article prepared from different ingredients by means of some process" (*L.C.C. v. Welford Surrey Dairies, Ltd., 1913] 2 K. B. 529, per AVORY, J., at p. 537; 24 Digest 933, 223*) ; therefore run honey is not confectionery, nor is it a perishable article, but sweets and pastry are (*Gee v. Davies (1916), 85 L. J. (K. B.) 1431; 24 Digest 933, 226*). "Perishable" does not mean rapidly perishable—butter is perishable ; see *L.C.C. v. Welford Surrey Dairies, supra*.

(*p*) Act of 1912, Sched. II.; 8 Halsbury's Statutes 625

(*q*) *Ibid.*, s. 4 (6); *ibid.*, 616.

(*r*) *Ibid.*, s. 4 (4); *ibid.*

(*s*) *Ibid.*, s. 4 (5); *ibid.*

(*t*) *Ibid.*, s. 11 (1); 8 Halsbury's Statutes 620.

(*u*) *Ibid.*, s. 11 (1A), added by the Act of 1928, s. 9 and Sched. III.; *ibid.*, 620, 651, 652.

(*a*) *Ibid.*, s. 11 (2); *ibid.*, 620.

concerned. Where the Postmaster-General certifies that the exigencies of the postal service require that the post office business should be transacted in any such shop at times when, under the provisions relating to the weekly half-holiday, the shop would be required to be closed, or under such conditions that the provisions relating to shop assistants' weekly half-holiday cannot be observed, the shop, for the purpose of the transaction of post office business, is exempt from such provisions to such extent as the Postmaster-General certifies to be necessary. In such cases the Postmaster-General must make the best arrangements that the exigencies of the postal service allow, with a view to the conditions of employment of the persons employed being on the whole not less favourable than those in other shops (b). [459]

Penalties and Savings.—In the case of contravention of, or non-compliance with, the foregoing provisions as to weekly half-holidays, the shop-keeper is liable to a fine of £1, £5 and £10 for the first, second and third or subsequent offences respectively. It is no offence to serve a customer after the closing hour if such customer was in the shop before that time, or if the occupier had reasonable grounds for believing that the article supplied to the customer was required in case of illness (c) or to serve customers after the closing hour with victuals, stores or other necessaries for a ship on her arrival at, or immediately before her departure from, a port (d). [460]

CLOSING ORDERS OF LOCAL AUTHORITY

A local authority may make an order to be confirmed by the Secretary of State applicable to all or any part of their district and to any specified class of shop, fixing the closing hours (not earlier than 7 p.m. (e) or later than the general closing hours) (f) on the several days of the week, or on one day of the week only (g). The order cannot prevent the transactions in Sched. I. of the 1928 Act, nor must it be inconsistent with that Act (h). The order may authorise sales after the specified closing hour in emergency, or in other specified cases (i), and it need not distinguish between the different shop-keepers in the same trade (k).

Procedure for making Orders.—Where satisfied that a *prima facie* case is made out for making a closing order, the local authority must give public notice, in the prescribed manner and form, of their intention to make an order (l); and if, after considering any objections, they are satisfied of the expediency of making the order, and also, after taking a vote in the prescribed manner (m), that at least two-thirds of the shops affected approve, they may make the order. Public notice of the

(b) Act of 1912, s. 12; 8 Halsbury's Statutes 621.

(c) *Ibid.*, s. 4 (7); *ibid.*, 616.

(d) *Ibid.*, s. 4 (8); *ibid.*, 617.

(e) *Ibid.*, s. 5 (2); *ibid.*

(f) Act of 1928, s. 1 (1); 8 Halsbury's Statutes 647.

(g) Act of 1912, s. 5 (1); *ibid.*, 617.

(h) See *Kenyon v. Street*, [1931] 1 K. B. 305; Digest (Supp.).

(i) Act of 1912, s. 5 (3) (b); 8 Halsbury's Statutes 617.

(k) *A.-G. v. Brighton Corp.* (1908), 99 L. T. 371; 24 Digest 981, 212.

(l) Act of 1912, s. 6 (1); 8 Halsbury's Statutes 617; S.R. & O., 1912, No. 316.

(m) No vote, however, is necessary if the local authority have received an application in writing for the making of the order purporting to be signed by two-thirds in number of the shops affected.

provisions of the order is given and copies supplied, after which it is submitted to the Secretary of State, who may after considering objections disallow the order or confirm it with or without modification (*n*). When confirmed the order becomes final and has the effect of an Act of Parliament (*o*). Forms are prescribed in the Regulations made by the Secretary of State (*p*). [461]

Local Inquiries.—The Secretary of State may institute a public local inquiry, where it appears from a representation of the local authority or of a substantial number of shop-keepers that it is expedient to ascertain the demand for early closing. Persons affected by the proposals may appear and be heard. If, after the holding of the inquiry and conferring with the authority, the Commissioner appointed deems a closing order expedient, he is to prepare and submit a draft order to the Secretary of State, with his report. If the Secretary of State, after considering any representations of the local authority, thinks a closing order desirable he communicates his decision to the local authority, who must then take all the necessary steps as outlined above for the making of an order in the form of the draft, with any modifications as the Secretary of State thinks fit (*q*). [462]

Revocation of closing Orders.—A closing order may be revoked by the Secretary of State, but only on the application of the local authority, who must make such application if satisfied that the occupiers of a majority of the class of shops affected by the closing order are opposed to its continuance. Any revocation is without prejudice to the making of a new closing order (*r*). [463]

RESTRICTIONS ON SUNDAY TRADING

Preliminary.—The law relating to the closing of shops on Sunday is embodied in the Shops (Sunday Trading Restriction) Act, 1936 (*s*), the Shops Regulations, 1937 (*t*), made in pursuance of the Act, and the Retail Meat Dealers' Shops (Sunday Closing) Act, 1936 (*u*).

The general effect of the Sunday Trading Restriction Act is (1) to require the closing of shops on Sundays, subject to a number of exceptions designed to meet the reasonable needs of the public, and (2) to provide for compensatory holidays during the week for persons employed on Sunday about the business of shops permitted to open, subject to exemptions for certain classes of workers. The provisions are in substitution for those of the Sunday Observance Acts relating to retail trading, and no offence under those Acts will be committed by the occupier of a shop who opens on Sunday by virtue of, and in accordance

(*n*) Act of 1912, s. 6 (2); 8 Halsbury's Statutes 618; S.R. & O., 1912, No. 316.

(*o*) *Ibid.*, s. 6 (3); *ibid.* Once an order is final it is not invalidated because of defects in the preliminary proceedings (*Hamilton v. Fyfe* (1907), S.C. (J.) 79; *Patent Agents Institute v. Lockwood*, [1894] A.C. 347; 42 Digest 618, 139).

(*p*) S.R. & O., 1912, No. 316.

(*q*) Act of 1912, s. 7; 8 Halsbury's Statutes 618. For methods of holding the inquiry, see S.R. & O., 1912, No. 316.

(*r*) *Ibid.*, s. 8; *ibid.*, 619. For the procedure to be followed, see S.R. & O., 1912, No. 316.

(*s*) 29 Halsbury's Statutes 152. Section references in this part of this article are to this Act, unless otherwise stated.

(*t*) S.R. & O., 1937, No. 271.

(*u*) 29 Halsbury's Statutes 150.

with, the provisions of the 1936 Act (*a*). This Act also applies to the carrying on of retail trade or business in places not being shops (*b*).

Special provision is made with regard to persons of the Jewish religion and to meet the special needs of holiday resorts.

Shops and other Places to which the Provisions apply.—The Act applies :

- (a) to retail shops as defined in sect. 19 of the Act of 1912 (*c*), with the exception of butchers' shops (*d*) ;
- (b) to any place where any retail trade or business (other than the retail sale of butchers' meat) is carried on elsewhere than in a shop (*b*).

In this part of this article, unless otherwise stated, any reference to a "shop" should be read as including a reference to any place at or from which retail trade or business is carried on, and any reference to an "occupier of a shop" should be read as including a reference to a person carrying on retail trade or business at or from such a place.

The Sunday Trading Restriction Act does not apply to wholesale trading. [464]

Transactions wholly exempted from the closing Provisions of the Act.—The following transactions are wholly exempted from the closing provisions of the Act (*e*) :

- (1) The sale of :
 - (a) intoxicating liquors (*f*) ;
 - (b) meals or refreshments, whether or not for consumption at the shop at which they are sold, but not including the sale of fried fish and chips at a fried fish and chip shop ;
 - (c) newly cooked provisions and cooked or partly cooked tripe ;
 - (d) table waters, sweets, chocolates, sugar confectionery and ice-cream (including wafers and edible containers) ;
 - (e) flowers, fruit and vegetables (including mushrooms) other than tinned or bottled fruit or vegetables ;
 - (f) milk and cream not including tinned or dried milk or cream, but including clotted cream whether sold in tins or otherwise ;
 - (g) medicines and medical and surgical appliances :
 - (i.) at any premises registered under sect. 12 of the Pharmacy and Poisons Act, 1933 (*g*) ; or
 - (ii.) by any person who has entered into a contract with an insurance committee under the National Health Insurance Act, 1936, for the supply of drugs and appliances (*h*) ;

(*a*) S. 14 (2) ; 29 Halsbury's Statutes 168.

(*b*) S. 18 ; *ibid.*, 162. A box tricycle is not a "place" within the section : see *Eldorado Ice Cream Ltd. v. Clark*, [1938] 1 K. B. 716 ; Digest Supp.

(*c*) 8 Halsbury's Statutes 624, as extended by the Shops Act, 1936, s. 1 (29 Halsbury's Statutes 149) to lending libraries.

(*d*) Ss. 10 (7), 15 ; 29 Halsbury's Statutes 160, 163. The Sunday closing provisions applicable to the sale of butchers' meat are contained in the Retail Meat Dealers' Shops (Sunday Closing) Act, 1936. See H. O. Circular, December 30, 1936.

(*e*) S. 1, Sched. I. ; 29 Halsbury's Statutes 153, 164.

(*f*) The provisions of the Licensing Act, 1921 ; 9 Halsbury's Statutes 1055, relating to the sale of intoxicating liquors on Sunday remain in force unaffected by the Act.

(*g*) 26 Halsbury's Statutes 571.

(*h*) 29 Halsbury's Statutes 1064. It is not necessary that the contract should contain a requirement for Sunday service. See H.O. Circular, April 15, 1937.

- (h) aircraft, motor or cycle supplies or accessories (i) ;
- (i) tobacco and smokers' requisites ;
- (j) newspapers, periodicals and magazines ;
- (k) books and stationery from the bookstalls of such railway or omnibus stations or aerodromes as may be approved by the Secretary of State (k) ;
- (l) guide books, postcards, photographs, reproductions, photographic films and plates, and souvenirs :
 - (i.) at any gallery, museum, garden, park or ancient monument under the control of a public authority or university ; or
 - (ii.) at any other gallery or museum, or any place of natural beauty or historic interest, or any zoological, botanical or horticultural gardens or aquarium, to such extent as the local authority may certify is desirable in the interests of the public (l) ; or
 - (iii.) in any passenger vessel within the meaning of Part II. of the Finance (1909-1910) Act, 1910 (m), while engaged in carrying passengers ;
- (m) photographs for passports ;
- (n) requisites for any game or sport at the place where it is played or carried on ;
- (o) fodder for horses, mules, ponies and donkeys at any farm, stables, hotel or inn (but not at a shop).

(2) The transaction of :

- (a) post office business ;
- (b) the business carried on by a funeral undertaker.

The following transactions are also exempted :

- (a) the sale by fishermen, elsewhere than in a shop, of freshly caught fish (including shell-fish) ;
- (b) the sale at a farm, small holding, allotment or similar place, of produce produced thereon (n), e.g. butter, honey, eggs.

The following sales are also permissible on Sunday :

- (a) the sale of victuals, stores or other necessaries required for a ship or aircraft on her arrival at, or immediately before her departure from a port or aerodrome (o) ;
- (b) the sale of goods to a club for club purposes (p) ;

(i) *Semble*, even though not for immediate use.

(k) Local authorities will be notified by the H.O. where any such bookstall in their district has been approved by the Secretary of State for this purpose. See H.O. Circular, April 15, 1937.

(l) Local authorities may either permit sales of all the articles mentioned for the whole of Sunday, or limit the classes of commodities which may be sold and/or the hours during which they may be sold. No form of certificate is prescribed.

(m) See s. 52; 9 Halsbury's Statutes 975. The Sunday Trading Restriction Act does not apply to a "sea-going ship" (*i.e.* a ship which in fact goes to sea; see s. 10 (6); 29 Halsbury's Statutes 160) and the special provision for passenger vessels will therefore apply to such vessels only on rivers, lakes and in certain tidal waters.

(n) S. 13; 29 Halsbury's Statutes 162, but by para. 1 (e), (f), in the Schedule, flowers, and fresh fruit, vegetables, milk and cream, and clotted cream whether sold in tins or otherwise, may be sold at any time on Sunday.

(o) S. 10 (1) (a); 29 Halsbury's Statutes 160.

(p) S. 10 (1) (b); *ibid.*

(c) the sale of the products of a handicraft, when the local authority are satisfied that a person engaged in handicraft at his home is dependent for his livelihood upon the Sunday sale of the articles he produces to such an extent that the prohibition of these sales would involve substantial hardship. In such a case the local authority may grant a certificate of exemption which may contain stipulations as to the period during which it is to be in force (*e.g.* the summer months) and as to the hours during which sales may be carried on, and any conditions which it is desired to include. The form of certificate is not prescribed (q);

(d) sales on sea-going ships (r). [465]

Cooking of Food for Customers.—Food brought to a shop (*e.g.* a baker's shop) by a customer to be cooked and required for consumption on Sunday, may be cooked before 1.30 p.m. and may be dispatched or delivered up to an hour not later than 1.30 p.m. (s). [466]

Goods Required in case of Illness.—Customers may be served on Sunday with any goods reasonably believed to be required in the case of illness (t). [467]

Transactions temporarily exempted from the closing Provisions of the Act.—The sale of (a) bread and flour confectionery, including rolls and fancy bread; (b) fish (including shell-fish); (c) groceries and other provisions commonly sold in grocers' shops (u), except in so far as they are included amongst the transactions (*e.g.* the sale of meals or refreshments) exempted under the First Schedule to the Act, are prohibited on Sunday, unless exempted in any district by a partial exemption order under sect. 2, or, in the case of a holiday resort, by an order under sect. 5 (*post*) applying to "articles of food" (a). [468]

Partial exemption Orders.—The transactions specified in the preceding paragraph may be exempted from the closing provisions of the Act for part of Sunday by a partial exemption order made by a local authority. The order may apply to all or part of a local authority's district and to any or all the transactions mentioned. It may permit the transactions specified in the order to be carried on up to a specified hour which must not be later than 10 a.m. (subject to any provisions in the order for cases of emergency or in other cases specified in the order). The order may contain such incidental provisions as may appear to the local authority necessary or proper (b).

For the procedure to be followed in making these orders see below. [469]

Holiday Resorts.—In places frequented as holiday resorts during certain seasons of the year, the local authority may by order provide that on such Sundays as may be specified in the order (but not more than eighteen Sundays in the year), shops, or any class of shops, in the district or any specified part thereof, may, subject to such conditions during such hours as may be specified, be open for the serving of customers for the purpose of the sale of (a) any articles required for the purposes of bathing or fishing; (b) photographic requisites; (c) toys,

(q) S. 10 (5).

(s) S. 10 (1) (c).

(u) S. 1, Sched. II.

(a) *Ibid.*, s. 1, Sched. II., see *post*, ss. 2, 5.

(b) S. 2; 29 Halsbury's Statutes 158.

(r) S. 10 (6).

(t) S. 10 (1) (2).

souvenirs and fancy goods; (d) books, stationery, photographs, reproductions and postcards; (e) any article of food (c).

For the procedure to be adopted in making these orders see below. [470]

Meals and Refreshments for Consumption off the Premises.—A local authority may prohibit by order the sale on Sunday of meals or refreshments for consumption off the premises in shops, or any specified class of shops, in their area or any part of it. The prohibition of off-sales under such an order will not, however, apply (a) to a restaurant or any other shop in which the sale of meals and refreshments for consumption on the premises forms a substantial part of the business, or (b) to sales of meals and refreshments elsewhere than at a shop (e.g. from a stall or by a street vendor) except to the extent and under the conditions specified in the order. Orders may be made for the whole year or for a specified period or periods (d).

For the procedure to be adopted in making these orders see below.

The object of these orders is to provide means of preventing misuse of the general exemption for refreshments for off-consumption by persons who do not carry on a genuine refreshment trade (e). [471]

Procedure for making Orders.—The procedure to be adopted before making a partial exemption order under sect. 2, an order relating to off-sales of meals and refreshments under sect. 3, or an order for a holiday resort under sect. 5 is as follows :

The local authority must give public notice of intention to make the proposed order in the prescribed manner (f), specifying a period of not less than four weeks within which objections may be made to the proposed order (g). If satisfied, after consideration of any objections received, that it is expedient to make the order and that the occupiers of not less than two-thirds of the shops or classes of shops to be affected (not those of persons trading elsewhere than in a shop) approve the order, they may make the order. Where more than one class of shop is affected there must be a two-thirds majority of each class in favour of the order. The method of ascertaining the opinions of the occupiers of shops affected is left to the local authority to determine, subject in the case of mixed shops to compliance with the provisions of sect. 6 (2). The order may be revoked or varied by subsequent order made in like manner (h). [472]

Special Provisions for Persons observing the Jewish Sabbath. General Observations.—The general effect of these provisions (i) is to permit a person of the Jewish religion (k) to keep his shop open until 2 p.m. on Sunday, provided :

(a) that he obtains registration by application in the prescribed form of the shop by the local authority;

(c) S. 5 and Sched. III. As the Act does not apply to the business of a retail dealer in butchers' meat a holiday resort order cannot be made for the sale of butchers' meat.

(d) S. 3; 29 Halsbury's Statutes 154.

(e) See H.O. Circular, April 15, 1937.

(f) See Regulations 2 (1); S.R. & O., 1937, No. 271.

(g) *Ibid.*, 2 (2).

(h) S. 6; 29 Halsbury's Statutes 155.

(i) S. 7; *ibid.*

(k) The provisions apply to persons who are members of any religious body regularly observing the Jewish Sabbath (s. 7 (12); 29 Halsbury's Statutes 158). They also apply to retail trade or business carried on elsewhere than in a shop, e.g. at a stall in a street.

- (b) that he keeps the shop, and any other shop occupied by him, closed for all purposes during the whole of Saturday; and
- (c) that he complies with certain other conditions designed to secure that the privilege of opening on Sunday under these special provisions is limited to persons who have a genuine conscientious objection to trading on the Jewish Sabbath (*l*).

Registration.—On receipt of an application in the prescribed form the local authority will register the shop, but : (1) *may* refuse to register if the registration of the shop or any other shop now occupied or formerly occupied by the applicant, or (in the case of an individual occupier) by any partnership or company of which he was then a partner or director has been revoked or cancelled (*m*) ; and (2) *must* refuse to register a shop if the registration of that shop has been revoked or cancelled while in the occupation of the present applicant (*n*).

In a case falling under (1) above, the local authority, having regard to the circumstances of such revocation or cancellation, will consider whether the present application is made on genuine religious grounds and/or whether there is evidence of previous abuse of the privilege of Sunday opening rendering it undesirable to permit the registration.

When the local authority refuse to register in a case falling under (1), an appeal lies to a court of summary jurisdiction, and from that court to quarter sessions (*o*).

Conditions to be observed after Registration.—(a) The shop and any other shop occupied by the same occupier must be kept closed for the whole of Saturday (*p*) for all purposes connected with trade or business, *i.e.* even though the class of trade or business carried on there is exempted from the closing provisions of the Act.

(b) The shop must be closed (except for exempted transactions) at 2 p.m. on Sunday (*q*).

(c) A notice must be kept conspicuously posted in the shop stating that it will be closed on Saturday, and specifying the hours during which and the purpose for which, it will be open on Sunday (*r*) after 2 p.m. for exempted transactions. This notice need not be exhibited by persons carrying on business elsewhere than in a shop (*s*).

(d) An individual occupier or a partner or director who has subscribed to the statutory declaration, must not be engaged on the Jewish Sabbath about the business of any shop, nor must he employ any person about the business of any shop on the Jewish Sabbath, or be concerned in the control or management of any partnership or company which so employs any person (*t*).

The above requirements must be observed so long as the shop is registered (whether or not it is actually open on Sunday); and registration can only be revoked or cancelled in the circumstances described below.

Revocation of Registration.—(a) Where any person is convicted of a contravention of, or non-compliance with, any of the above requirements, the court may, in addition to any other penalty, order the revocation of the registration of any shop occupied by him or by a partnership or

(*l*) S. 7 (2) and Regulation 3, Forms III. and IVa., IVb. Penalties are provided for untrue representations for the purpose of procuring registration, *ibid.*, s. 7 (4).

(*m*) S. 7 (10) (b).

(*n*) S. 7 (10) (a).

(*o*) S. 7 (11).

(*p*) S. 7 (1) (a), (5) (a).

(*q*) S. 7 (1) (b).

(*r*) S. 7 (1) (c).

(*s*) S. 7 (1).

(*t*) S. 7 (5) (b).

company in which he is directly concerned, but the court shall not order the revocation of the registration of any shop not occupied, or not occupied solely, by the person convicted, except after affording an opportunity to the occupier or to the other occupiers to be heard (u).

(b) If it appears to a local authority on representations made to them, that the occupier of a shop either (i.) is not of the Jewish religion, or (ii.) has no genuine conscientious objection to trading on the Jewish Sabbath (or in the case of a partnership or company that the majority of the partners or directors have no such genuine conscientious objection) the local authority may refer the case to the appropriate tribunal (a). If the tribunal reports that the occupier is not of the Jewish religion or that he does not hold a genuine conscientious objection as aforesaid, the local authority must revoke the registration of the shop, and thereupon the registration of all other shops in the same occupation, whether or not they are in that local authority's area, will be deemed to be revoked (b).

Cancellation of Registration at Occupier's Request.—An occupier is entitled to cancellation at his own request but not until twelve months from the date on which an application for the registration of the shop was last made (c).

Once the registration has been cancelled, the shop must not be re-registered while in the same occupation (d).

Change of Occupation.—Change in the occupation of or in the partnership or directorate of a company occupying a registered shop must be forthwith notified to the local authority, but whether or not such notice has been given, the registration will be deemed to be cancelled after the expiration of fourteen days from the date of the change, unless within that period or such extended period as may be allowed by the local authority a fresh application for registration has been made. Upon such fresh application the local authority may dispense with a statutory declaration in the case of any partner or director who has already made such a declaration in connection with a previous application to that authority in respect of that or any other shop in the area (e).

Modification of the Provisions of the Act of 1912 relating to the closing of Shops on the weekly Half-holiday and the Shop Assistants' Half-holiday.—The effect of these modifications is that so long as a shop is registered under sect. 7 of the Act (a) any shop required to close on the weekly half-holiday must close on a weekday other than Saturday; and shop assistants must be given their half-holiday on one weekday other than Saturday; (b) a weekly half-holiday order which is to apply to a registered shop must permit "Friday" to be substituted for the day fixed by the order in the case of registered shops (f).

With regard to (b) above, *semble*, in the absence of any saving for existing orders made under sect. 4 (2) of the Act of 1912, such orders will cease to apply to registered shops. An occupier of a registered shop will therefore be free, until a fresh order is made fixing Friday instead of Saturday as the alternative day, to choose his own weekly half-holiday in accordance with sect. 4 (3) of the Act of 1912.

As regards a combined order under sects. 4 (6) and 4 (2) whereby sect. 4 of the Act of 1912 is extended to an exempted trade or business

(u) S. 7 (6).

(a) See Regulation 4, S.R. & O., 1937, No. 271.

(b) S. 7 (7).

(d) S. 7 (10) (a).

(f) S. 7 (18).

(c) S. 7 (9).

(e) S. 7 (8).

and the weekly half-holiday is fixed, *semble*, that part of the order which requires the shop to be closed on a weekday remains in force for registered shops (g). [473]

Mixed Shops.—When several trades or businesses are carried on in the same shop and these include any two or all of the following classes of trade or business, namely : (a) a trade or business subject to the closing provisions of the Acts ; (b) a trade or business consisting of transactions wholly exempted from the closing provisions by virtue of the Act itself or of any order made by a local authority ; (c) a trade or business consisting of transactions partially exempted (*i.e.* for part of Sunday only) by virtue of the Act itself or of any order made by a local authority, the shop may be kept open for exempted transactions only ; provided that (1) a notice in terms of Form I. in the Schedule to the Regulations is exhibited in accordance with Regulation 1 ; and (2) so far as reasonably practicable no goods in connection with any trade or business are exhibited inside or outside the shop at any time on Sunday when the shop cannot lawfully be kept open for serving customers with those goods (h). These two conditions are not applicable in places not being shops (i). [474]

Delivery and Dispatch.—The delivery or dispatch for delivery on Sunday of goods sold retail (whether sold on the Sunday or previously) is prohibited at any time when a customer could not be served with those goods in the shop. This prohibition does not apply to goods sold wholesale (k).

Exceptions.—Exceptions are made (1) in the case of Christmas Eve or Christmas Day when either day falls on a Sunday, and (2) to permit the dispatch or delivery at any time (a) of necessaries required for a ship or aircraft on her arrival at or immediately before her departure from a port or aerodrome ; and (b) of goods dispatched or delivered to a club for club purposes ; (c) of goods reasonably believed to be required in case of illness (l). [475]

Evening closing Hours on Sunday.—A shop wholly exempted from Sunday closing, by virtue either of the Act itself or of an order or certificate of a local authority, will be subject, as regards the evening closing hour, to the Act of 1928 and any order made thereunder, and to the provisions of any closing order made by the local authority which fixes a closing hour for Sunday.

Where the hours of opening on Sunday are specified in any order for a holiday resort under sect. 5 of the Act or in any certificate issued by a local authority, the authority cannot fix a closing hour which is later than the evening closing hours referred to above. [476]

Sales to Customers present in the Shop before the closing Hour.—When a shop is permitted to open on Sunday up to a certain hour by virtue of the Act or of any order thereunder, a customer who was in the shop before the closing hour may be served after that hour, so long as he leaves the shop not later than half an hour after the closing hour (m). [477]

Notice relating to any Order affecting a Shop.—An occupier whose shop is affected by an order by a local authority under the Act (*e.g.*

(g) See H.O. Circular, April 15, 1937.

(h) S. 4 and Regulation 1.

(i) Regulation 11 (1).

(k) S. 9 ; 29 Halsbury's Statutes 160.

(l) S. 10 (1), (2) ; *ibid.*

(m) S. 10 (3) ; *ibid.*

a partial exemption order) must, if he opens on Sunday, keep conspicuously posted in his shop either a copy of the order or orders applying to the shop, or the notice prescribed by Regulation 7 (Form VI.) stating the titles and terms of any orders applying to his shop (n).

Hairdressers.—The carrying on of the business of a hairdresser is subject to the Act (o). Attendance is, however, permitted on Sunday upon any person whose infirmity makes this necessary, and upon residents in clubs as well as in hotels (p).

Jewish hairdressers who were prior to May 1, 1937, carrying on business on Sundays by virtue of a notice given under sect. 3 of the Act of 1936 may, upon registering in accordance with sect. 7 of the Act, open on Sundays, subject to compliance with the statutory conditions, but only until 2 p.m. [478]

Compensatory Holidays for Persons employed on Sunday. Holidays to be Given (q).—(a) A person employed for more than four hours on a Sunday must (i.) receive in respect of his employment on that Sunday a whole holiday on a weekday, either in the previous week or in the week beginning with that Sunday, and (ii.) must not be employed in a shop on more than two other Sundays in the same month. (b) A person employed for four hours or less on a Sunday must receive in respect of his employment on that Sunday a half-holiday on a weekday, either in the previous week or in the week beginning with that Sunday, i.e. on that weekday he must either not be employed before 1.30 p.m., or not be employed after 1.30 p.m.

In the case of a person already entitled to a statutory half-holiday (i.e. a half-holiday under sect. 1 of the Act of 1912, as amended by sect. 9 of the Act of 1934), the whole or half-holiday given in compensation for Sunday employment must be in addition to the statutory half-holiday. A whole holiday may be given to a person entitled to a compensatory half-holiday and to a statutory half-holiday, in lieu of the two half-holidays.

The holiday to be given is a holiday from the business of the shop in which the person is employed on Sunday, and therefore, where a person is employed by the occupier of a shop on Sunday only, or for part only of the week including Sunday, the occupier is entitled to treat one of the days on which he does not employ the person as the day of the compensatory holiday, even though the person may be employed on that day by another employer; in such a case the second employer is under no statutory obligations to give the holiday. The prohibition of employment on more than two other Sundays in the same month, however, applies to employment about the business of *any* shop, and (subject to the exceptions mentioned below) to *all* persons employed for more than four hours on Sunday, including part-time employees (r).

Persons Entitled to Compensatory Holidays.—Subject to the exceptions mentioned later, the holiday must be given :

(a) to all persons employed on Sunday about the business of a shop (and not merely shop assistants), which is open for the serving

(n) S. 12 (a), and Regulation 7. The notice need not be exhibited by persons trading elsewhere than in a shop.

(o) S. 16 (4) and Sched. IV.; 29 Halsbury's Statutes 164, 165.

(p) S. 10 (4); 29 Halsbury's Statutes 160.

(q) S. 11; 29 Halsbury's Statutes 161.

(r) See H.O. Circular, April 15, 1937.

of customers on that day, even though they are unpaid. (The provisions apply only to persons employed about the business of a shop open for the serving of customers on Sunday, and a shop is to be regarded as so open if orders are taken over the telephone or by other means, even though the door is closed and customers are not admitted (*s*). Provided, however, that the shop is closed for the serving of customers throughout the day the provisions relating to compensatory holidays will not apply to persons employed on Sunday in the closed shop, e.g. in stocktaking or in making up books).

- (b) To persons wholly or mainly employed in connection with retail business carried on elsewhere than in a shop (*t*).

The Act does not authorise the employment of any person at any time when such employment would be unlawful under the Shops Acts, 1912 to 1934 (*u*), or the Sunday Entertainments Act, 1932 (*v*).

Exceptions.—The following classes of employees are exempt from the provisions as to compensatory holidays :

- (a) persons employed wholly or mainly (*a*) in connection with the sale of intoxicating liquor ;
- (b) shop assistants employed in any premises for the sale of refreshments to whom the provisions of the Act of 1918 (*b*) apply by virtue of the election by the occupier to adopt the provisions of that Act ;
- (c) persons employed wholly or mainly (*a*) as milk roundsmen ;
- (d) persons employed wholly (*a*) in post office business ;
- (e) registered pharmacists, subject to the following conditions :
 (i.) that they are not employed on Sunday except in connection with the sale of medicines or medicinal or surgical appliances ;
 (ii.) that the shop in which they are employed is required to open on Sundays in pursuance of a contract with the local National Health Insurance Committee ; (iii.) that they are not employed for more than two hours on the Sunday ; (iv.) that they have not been employed on the previous Sunday ;
 (v.) that they are given time off in respect of the Sunday employment, *i.e.* they either are not employed before 10.30 a.m. or are not employed after 6 p.m. on one week-day (other than the day of the statutory half-holiday) in the previous week, or in the week commencing with that Sunday (*c*). [479]

Records.—The occupier must keep a record in the prescribed form of (a) the names of and hours worked on Sunday by all the persons entitled to compensatory holidays, and (b) the respective days of the week on which they receive their compensatory holidays. Entries must be made on the day to which they relate or, if that is not practicable, on the following day, and the records relating to any month

(*s*) See H.O. Circular, April 15, 1937.

(*t*) S. 18, proviso (*b*) ; 29 Halsbury's Statutes 162.

(*u*) See "Preliminary," p. 259, *ante*.

(*v*) 25 Halsbury's Statutes 921.

(*a*) These words "wholly" or "mainly" apply to the Sunday employment only and not the employment throughout the week ; see H.O. Circular, April 15, 1937.

(*b*) See *ante*, p. 268.

(*c*) S. 11 ; 29 Halsbury's Statutes 161.

must be preserved at the shop for a period of not less than six months (d). [480]

Retail Meat Dealers' Shops.—The business of a retail dealer in butchers' meat is not subject to the Act of 1936, but is governed by the Retail Meat Dealers' Shops (Sunday Closing) Act, 1936 (e).

Prohibition of Sale on Sunday.—This Act prohibits the sale on Sunday of butchers' meat (f) not only in butchers' shops but also at a stall or any other place (g) (subject to the under-mentioned exemptions).

Exemption for Jewish Butchers.—A Jewish butcher may keep his shop open on Sunday for the sale of kosher meat (h) if he complies with the following conditions : (a) he must be licensed for the sale of kosher meat by the local Board of Shechita, or, in the absence of such Board, by a committee appointed by the local Jewish congregation ; (b) he must not carry on the business of a retail dealer either in kosher meat or in ordinary butchers' meat on Saturday ; (c) he must give notice to the local authority of his intention to carry on business on Sunday ; and (d) if he has a shop, he must put up a notice stating that it is open on Sunday for the purpose of selling kosher meat, but is closed on Saturday (i).

A Jewish butcher who, so-exempted, closes his shop for the whole of Saturday, must not fix Saturday as the half-holiday for his shop assistants, and if his shop is required by an order of the local authority to close for the weekly half-holiday, he must close on a day other than Saturday. Any future weekly half-holiday order applying to butchers' shops will contain a provision enabling Jewish kosher butchers who open on Sunday to substitute Friday for the day fixed by the order (or if Friday is the day fixed, to substitute a day other than Saturday). Until such an order has been issued a Jewish kosher butcher who opens on Sunday may choose any day other than Saturday as the day of the weekly half-holiday. The day chosen must be specified in a notice affixed in the shop (k).

Dispatch and Delivery.—The dispatch or delivery of butchers' meat from a shop is prohibited at any time when the shop may not be kept open for the serving of customers, but this does not apply on Christmas Day or Christmas Eve when either of those days falls on a Sunday (l).

Exemption for Supplies to Ships or Aircraft.—An exemption is provided for the sale, dispatch or delivery on Sunday of butchers' meat required for ships or aircraft on their arrival at or immediately before their departure from a port or aerodrome (m). [481]

ENFORCEMENT OF THE SHOPS ACTS

Penalties.—Non-compliance with or contravention of any of the provisions of the Acts renders the offender liable for a first offence to a fine of £5 and for a second or subsequent offence a fine of £20 (n). [482]

(d) S. 12 (b) ; 29 Halsbury's Statutes 162, and Regulations 8, 9 and 10.

(e) 29 Halsbury's Statutes 150.

(f) Butchers' meat means "beef, mutton, veal, lamb or pork (including livers, heads, feet, hearts, lights, kidneys or sweetbreads) whether fresh, chilled, frozen or salted, and includes kosher meat" : s. 7 ; 29 Halsbury's Statutes 152.

(g) *Ibid.*, s. 1 ; 29 Halsbury's Statutes 150.

(h) "Kosher meat" means "butchers' meat killed and prepared by the Jewish ritual method" : *ibid.*, s. 7, *supra*.

(i) The form of notice is not prescribed.

(k) *Ibid.*, s. 8 ; 29 Halsbury's Statutes 151.

(l) *Ibid.*, s. 4 ; *ibid.*

(m) *Ibid.*, s. 5 ; *ibid.*

(n) *Ibid.*, s. 6 ; *ibid.*

Administration.—The administration of the Act rests with the local authorities who are shops authorities as defined by sect. 13 of the Act of 1912 (*o*), and their inspectors have the powers and duties conferred by that Act (*p*). [483]

Duty to take Proceedings.—Subject as stated below, it is the duty of every local authority to enforce within their district the provisions of the Shops Acts and of the orders made thereunder or under any enactment repealed by the Shops Acts. It is their duty for that purpose to institute and carry on such proceedings in respect of failures to comply with or contraventions of the Shops Acts and of the orders as may be necessary to ensure their observance (*q*). [484]

Appointment of Inspectors.—The local authority must appoint inspectors, who are to have for the purposes of their powers and duties in relation to shops the powers conferred on inspectors in relation to factories and workshops (*r*). An inspector may, if so authorised by the local authority, institute and carry on proceedings under the Shops Acts on behalf of the authority (*s*). [485]

Local Authorities.—The local authorities are, for a municipal borough, the borough council; for an urban district with a population according to the last census for the time being of 20,000 or upwards, the district council; and elsewhere the county council. But the county council may, with the approval of the Secretary of State, delegate to any other U.D.C. or R.D.C. any of its powers under the Acts, on such terms and conditions as may be agreed on, and the district council may, as part of the agreement, undertake to pay the whole or part of any expenses incurred by them in connection with the exercise of the powers so delegated (*t*). [486]

Expenses of Local Authorities.—The expenses of a local authority under the Shops Acts (including any expenses payable in connection with the exercise of delegated powers) are to be defrayed in the case of the council of a borough out of the general rate fund of the borough (*u*); in the case of an U.D.C. out of the general rate fund of the district (*a*); and in the case of a R.D.C. out of the general rate fund of the district (*b*). [487]

Prosecution of Offences and Recovery of Fines.—All offences against the Shops Acts are to be prosecuted and all fines recovered in like manner as offences and fines under the Factories Act, 1937 (*c*). All fines are

(*o*) 8 Halsbury's Statutes 621.

(*p*) Retail Meat Dealers' Shops (Sunday Closing) Act, 1936, ss. 6, 7; 29 Halsbury's Statutes 150—152.

(*q*) Act of 1912, s. 13 (1), *supra*. These provisions as to enforcement apply to the Act of 1918 (see s. 2 (1) of that Act), Act of 1928 (see s. 10 (2) of that Act), Act of 1934 (save that the word "shop" in ss. 13, 14 of the Act of 1912 in their application to the Act of 1934 has the same meaning as in s. 15 of the Act of 1934, and, in relation to the provisions of the Act of 1934 applying to retail business carried on in any place other than a shop, includes a reference to any such place (Act of 1934, s. 13 (1)). Moreover, ss. 13, 14 of the Act of 1912 do not apply to the provisions of the Act of 1934 as to street trading or ventilation and temperature of shops and sanitary convenience. As to these matters, see *ante*, p. 268.

(*r*) See Factories Act, 1937, ss. 128, 124; 30 Halsbury's Statutes 284, 285.

(*s*) Act of 1912, s. 13 (1), *supra*.

(*t*) *Ibid.*, s. 18 (2).

(*u*) *Ibid.*, s. 13 (3). See L.G.A., 1933, s. 185; 26 Halsbury's Statutes 407.

(*a*) *Ibid.*, s. 188; 26 Halsbury's Statutes 408.

(*b*) *Ibid.*, s. 191; *ibid.*, 410.

(*c*) S. 40; 30 Halsbury's Statutes 292.

to be paid to the local authority and carried to the credit of the fund out of which expenses are paid (*d*).

Where an offence for which the occupier of a shop is liable under the Shops Acts has, in fact, been committed by some manager, agent, servant or other person, the manager, agent, or other person is liable to the like penalty as if he were the occupier (*e*).

On being charged with the offence, the employer may, on information duly laid by him, have any other person (*e.g.* the shop assistant) whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if he proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Acts and that the person whom he charges as the actual offender has committed the offence in question without his knowledge, consent or connivance, such other person is to be summarily convicted of such offence and the employer is to be exempt from any fine (*f*). If the employer does not bring the occupier before the court the employer himself may be convicted (*g*). A limited company may be prosecuted (*h*).

【488】

Duties with regard to Street Trading.—It is the duty of the local authority having power under the Children and Young Persons Act, 1933 (*i*), to enforce as part of their duties under that Act the provisions of the Shops Act, 1934, in their application to street trading (*k*). 【489】

LONDON

The local authorities in London for the general purposes of the Shops Acts are the City corporation as regards the City and the L.C.C. as regards the rest of the county, but the L.C.C. have power to delegate to the borough councils (*l*). No such delegation has taken place. For the enforcement of the sanitary provisions of the Act of 1934, the authorities are the metropolitan borough councils and the City corporation (*m*). As to the authorities for the purpose of street trading, see title STREET TRADING. 【490】

(*a*) Act of 1912, s. 14 (1); 8 Halsbury's Statutes 622.

(*e*) *Ibid.*, s. 14 (2).

(*f*) *Ibid.*, s. 14 (3).

(*g*) *Ward v. Smith (W. H.) & Son*, [1913] 3 K. B. 154; 24 Digest 932, 215.

(*h*) *Evans & Co., Ltd. v. L.C.C.*, [1914] 3 K. B. 315.

(*i*) 26 Halsbury's Statutes 168.

(*k*) Act of 1934, s. 18 (2); 27 Halsbury's Statutes 287.

(*l*) Act of 1912, s. 18; 8 Halsbury's Statutes 621.

(*m*) Act of 1934, ss. 18, 15; 27 Halsbury's Statutes 287, 288.

SHOPS, RATING OF

See RATING OF SPECIAL PROPERTIES.

SINGING

See MUSIC, SINGING AND DANCING.

SINKING FUNDS

See BORROWING; MORTGAGES; REDEMPTION OF CAPITAL EXPENDITURE; STOCK.

SKATING

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	- 291	-	

See also titles :

ACCIDENTS;

BYE-LAWS;

LAKES IN PLEASURE GROUNDS;

OPEN SPACES;

PUBLIC PARKS.

General.—The powers of local authorities in regard to skating relates to that in their own parks or recreation grounds. The liability of the authority in regard to safety, apart from the restrictions or conditions described below, is the same as for other local government functions (*a*). The bye-laws of the authority in regard to the park generally may contain references to skating (*b*), especially where the Act of 1907 has not been applied (*c*).

Sects. 59 and 60 of the P.H.A., 1936 (*d*), which deal with the exits entrances and means of escape from fire in buildings used as places of public resort, may also apply where indoor skating is provided. Indoor skating may also be one of the uses for which the public baths may be used or let between October and April (*e*). [491]

Provision and Management.—Power is given to local authorities to enclose part of a public park or pleasure ground during a time of frost for the purpose of protecting ice for skating by sect. 76 of the P.H.A. Amendment Act, 1907 (*f*), subject to rules and conditions made by the M. of H. (*g*). They may charge for admission to the part enclosed but only on condition that at least three-quarters of the ice available for the purpose of skating is open for the use of the public free of

(*a*) See title ACCIDENTS.

(*b*) See titles BYE-LAWS and MODEL BYE-LAWS.

(*c*) See below.

(*d*) 29 Halsbury's Statutes 369, 371.

(*e*) P.H.A., 1936, s. 226; 29 Halsbury's Statutes 472.

(*f*) 18 Halsbury's Statutes 938; an adoptive provision, see s. 3; *ibid.* 911.

(*g*) None have in fact been made.

charge. By sect. 77 (h) officers may be appointed to secure the observance of the regulations or bye-laws and these may be sworn in as constables, but may only act as constables if in uniform or provided with a warrant. [492]

London.—Under the L.C.C. (General Powers) Act, 1935 (i), the L.C.C. and metropolitan borough councils may flood and enclose parts of open spaces (including parks and recreation grounds) during time of frost for ice skating, and may charge for admission; bye-laws may be made (k). [493]

(h) 13 Halsbury's Statutes 939.

(i) S. 42 (1) (d); 28 Halsbury's Statutes 151.

(k) S. 46 (1); *ibid.*, 153.

SKY SIGNS AND ADVERTISEMENTS

See ADVERTISEMENTS.

SLAUGHTERHOUSES AND KNACKERS' YARDS

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See also titles :

DISEASES OF ANIMALS;
INFECTIONOUS DISEASES;
MEAT;

OFFENSIVE TRADES;
UNSOUND FOOD.

INTRODUCTION

The provisions relating to slaughterhouses and knackers' yards are contained in Part V. of the Food and Drugs Act, 1938 (a); the Slaughter

(a) 31 Halsbury's Statutes 282—291; this Act came into operation on October 1, 1939. Part V. does not apply to London; s. 103 (2), *ibid.* 318.

of Animals Act, 1933 (*b*) ; the Protection of Animals Act, 1911 (*c*) ; and the Public Health (Meat) Regulations, 1924 (*d*). The provisions of Part V. of the Act of 1938 do not apply to any slaughterhouse or knacker's yard belonging to the Port of London, or the Mersey Docks and Harbour Board and forming part of an imported animals wharf or landing place approved by the M. of A. under the Diseases of Animals Acts, 1894 to 1937 (*e*), for the purpose of the landing of imported animals (*f*).

The expression "slaughterhouse" means any premises used in connection with the business of slaughtering animals, the flesh of which is intended for sale for human consumption ; the expression "animal" does not include bird ; and the expression "knacker's yard" means any premises used in connection with the business of slaughtering, flaying or cutting up animals, the flesh of which is not intended for human consumption (*g*). [494]

PUBLIC SLAUGHTERHOUSE

A local authority (*h*) may provide public slaughterhouses, but any proposal involving the erection of a slaughterhouse within the district of another local authority requires the consent of that authority, but such consent must not be unreasonably withheld, and any question whether or not consent is unreasonably withheld must be referred to and determined by the Minister of Health (*i*). It should be noted that a local authority have no power to provide a public knacker's yard. A local authority who have provided a public slaughterhouse may employ persons to slaughter or stun animals in accordance with the provisions of the Slaughter of Animals Act, 1933 (*k*), and may make such charges as they consider reasonable for the services of the persons so employed (*l*).

Where a local authority have provided a public slaughterhouse in accordance with the above provisions, or under any enactment repealed by the F. and D. Act, 1938, or by the P.H.A., 1875, it is provided that bye-laws shall be made for securing that the slaughterhouse is kept in a sanitary condition and is properly managed and for preventing cruelty therein (*m*). The authority may make such charges in respect of the use of the slaughterhouse as the M. of H. approves, or such less charges as they may from time to time determine. They may also provide plant or apparatus for treating or disposing of waste matters and refuse resulting from the slaughtering of animals in the slaughterhouse (*m*). The M. of H. have issued a model series of bye-laws applicable to public slaughterhouses (*n*), and the procedure governing the making of such

(*b*) 26 Halsbury's Statutes 647.

(*c*) 1 Halsbury's Statutes 373.

(*d*) S.R. & O., 1924, No. 1432.

(*e*) 1, 30 Halsbury's Statutes 389, 93.

(*f*) Food and Drugs Act, 1938, s. 63 ; 31 Halsbury's Statutes 291.

(*g*) *Ibid.*, s. 100 ; *ibid.*, 313.

(*h*) "Local authority" means, as respects any borough, urban or rural district, the council of the borough or district ; Food and Drugs Act, 1938, s. 64 ; 31 Halsbury's Statutes 292.

(*i*) *Ibid.*, s. 60 (1) ; *ibid.*, 289.

(*k*) 26 Halsbury's Statutes 647 ; and see *post*, p. 299.

(*l*) Slaughter of Animals Act, 1933, s. 3 ; 26 Halsbury's Statutes 649.

(*m*) Food and Drugs Act, 1938, s. 60 (2) ; 31 Halsbury's Statutes 289.

(*n*) Series IVa, obtainable from the M. of H.

bye-laws is contained in the L.G.A., 1933 (*o*). The M. of H. is the confirming authority in respect of bye-laws made under the Food and Drugs Act, 1938 (*p*).

Public slaughterhouses are not subject to the provisions mentioned below under the heading "Private Slaughterhouses," relating to licensing (*q*); bye-laws (*r*); and the display of a sign outside slaughterhouses (*s*), whether the public slaughterhouse is provided by a local authority under the Food and Drugs Act, 1938, or under any other Act (*t*). [495]

Provision of Cold-air Stores and Refrigerators (*u*).—Where a local authority have provided, or are about to provide, a public slaughterhouse or a market, they may, subject to the approval of the M. of H., also provide a cold-air store or refrigerator and they may make charges in respect of the use thereof. If the authority propose to provide such a store or refrigerator within the area of another local authority, they must obtain the consent of that authority, but such consent must not be unreasonably withheld, and any question whether or not consent is unreasonably withheld must be referred to and determined by the M. of H. Before making application to the Minister for approval to the provision of a store or refrigerator, the local authority must, one month at least before making the application, give notice of their intention by advertisement in one or more local newspapers circulating in their district, and, where the consent of the local authority of another district is required, in one or more local newspapers circulating in that district, and the Minister must consider any objection to the proposals which he may receive within four weeks after the date of publication of the advertisement from any person appearing to him to be interested. If such an objection is received and not withdrawn a local inquiry must be held (*a*). [496]

PRIVATE SLAUGHTERHOUSES AND KNACKERS' YARDS

Licensing.—The occupier, and any other person other than the occupier, may not use any premises as a slaughterhouse or knacker's yard, or permit them to be so used, unless the occupier holds a licence from the local authority authorising the premises to be used as a slaughterhouse, or, as the case may be, a knacker's yard. Where premises were in use as a slaughterhouse or knacker's yard on September 30, 1939 (*b*), whether registered or licensed as such, the occupier of the premises was deemed to hold in respect thereof a licence for a period of four months, expiring on January 31, 1940 (*c*). In other words, local authorities were allowed a period of four months in which to review the condition of all the slaughterhouses in their districts. It will be observed that only those premises in use as slaughterhouses or knackers'

(*o*) S. 250; 26 Halsbury's Statutes 440.

(*p*) Food and Drugs Act, 1938, s. 91 (1); 31 Halsbury's Statutes 308.

(*q*) *Ibid.*, s. 57; *ibid.*, 287; and see *infra*.

(*r*) *Ibid.*, s. 58; *ibid.*, 288; and see *post*, p. 296.

(*s*) *Ibid.*, s. 59; *ibid.*, 289; and see *post*, p. 296.

(*t*) *Ibid.*, s. 60 (3); *ibid.*, 290.

(*u*) As to the liability of a local authority for the loss of carcasses deposited in a cold-store, see *Economic Stores (Halifax) v. Halifax Corp. n.* (1923), 87 J. P. 77; 38 Digest 228, 550.

(*a*) Food and Drugs Act, 1938, s. 62; 31 Halsbury's Statutes 291.

(*b*) The date preceding the date of coming into operation of the Food and Drugs Act, 1938.

(*c*) Food and Drugs Act, 1938, s. 57 (1); 31 Halsbury's Statutes 287.

yards at September 30, 1939, were deemed to be licensed for a period of four months from that date. The use of premises for pining cattle only, as part of the business of slaughtering, the actual slaughtering taking place elsewhere, has been held to be a continuance of user (*d*), and the occasional use of the premises for slaughtering purposes, carried on without the knowledge of the local authority, is also a continuance of user (*e*). A person who merely pays the owner of the slaughterhouse for being allowed to slaughter animals there does not use such premises as a slaughterhouse (*f*), but para. (b) of sect. 57, Food and Drugs Act, 1938, now places such a person in the same position as the actual occupier of the slaughterhouse.

Upon the receipt of an application for the grant or renewal of a licence authorising the use of premises as a slaughterhouse or knacker's yard, the local authority *may* grant or renew such licence. Except in the case of the renewal of a licence, the authority may not grant a licence until the premises concerned have been inspected and reported upon by an officer of the authority. An authority cannot refuse to grant or renew a licence in respect of premises which were in use as a registered or licensed slaughterhouse or knacker's yard on September 30, 1939 (*g*), unless they are satisfied that the applicant is not a proper person to keep such a place, or that the premises concerned are not suitable for use either as a slaughterhouse or knacker's yard (*h*). If a local authority are satisfied that premises in use as a slaughterhouse or knacker's yard on the above date are not suitable for that purpose, they must, unless satisfied that it is not reasonably practicable to render the premises suitable, adjourn the application for a licence and serve on the applicant a notice specifying the works which will, in their opinion, render the premises suitable and allowing a reasonable time, not being less than three months from the service of the notice, for the execution of those works. Such a notice operates as a grant or renewal of a licence to the applicant for a period of one month after the expiration of the time fixed by the notice, or of any extension thereof granted by the authority (*i*).

In deciding as to the suitability of premises for use as a slaughterhouse or knacker's yard, local authorities may bear in mind the suggestions as to the site and structure of slaughterhouses, which were printed by the L.G.B. and M. of H. in the preface to the model bye-laws with respect to slaughterhouses issued before the F. and D. Act, 1938, but should remember that even when printed these suggestions were not binding on them. Each application has to be considered on its merits (*j*). In dealing, particularly, with applications for existing slaughterhouses under the Food and Drugs Act, 1938, it may be unreasonable to require compliance with those suggestions. For example, many cases will occur where premises suitable in other respects, are situated within 100 feet of a dwelling-house, but it would not be reasonable to refuse to license such premises on that ground alone (*jj*).

(*a*) *Hides v. Littlejohn* (1896), 60 J. P. 101; 74 L. T. 24, D. C.; 38 Digest 223, 549.

(*b*) *Wooliscroft v. Stoke-on-Trent Corpn.* (1928), 92 J. P. 150; Digest (Supp.).

(*c*) *R. v. Heyworth, etc., and West Derby Hundred JJ.* (1866), 30 J. P. 423; 38 Digest 222, 545.

(*d*) The date preceding the date of coming into operation of the Food and Drugs Act, 1938.

(*e*) Food and Drugs Act, 1938, s. 57 (2); 31 Halsbury's Statutes 287.

(*f*) *Ibid.*, s. 57 (3); *ibid.*, 288.

(*g*) Model Series VI.

(*jj*) See J. P. Jo. p. 184 of Vol. CIV.

A local authority are entitled to require an applicant for a licence, or a renewal of a licence, to supply them with information as to any similar licence which he holds or has held, either in their own or any other district (*k*).

Where a local authority refuse to grant or renew a licence in respect of a slaughterhouse or knacker's yard, they must forthwith give notice to that effect to the applicant, and if required by him within fourteen days of the date of such notice, supply to him within forty-eight hours a statement of the grounds on which their refusal is based (*l*). A person aggrieved by the refusal of a local authority to grant or renew a licence may appeal to a court of summary jurisdiction (*m*). The procedure in case of such an appeal is by way of complaint for an order and the Summary Jurisdiction Acts apply to the proceedings. The appeal must be brought within twenty-one days from the date on which notice of the authority's refusal was served upon the applicant, and the making of the complaint is deemed to be the bringing of the appeal. The notice of the local authority's refusal to grant or renew a licence must state the right of appeal and the time within which it may be brought (*n*). An aggrieved person may appeal from the decision of a court of summary jurisdiction to quarter sessions (*o*). Where an appeal is lodged against a decision of the local authority or a court of summary jurisdiction, the appellant is entitled to carry on business and to use the premises as a slaughterhouse or knacker's yard until the time for appealing has expired or until the appeal is finally disposed of or abandoned, or has failed for want of prosecution (*p*).

If a person is convicted of an offence against the provisions of any bye-laws made by a local authority with respect to slaughterhouses and knackers' yards (*q*), the court may, in addition to any other penalty, cancel the licence authorising the use of the premises as a slaughterhouse or knacker's yard (*r*).

Where a person who holds a licence to use premises as a slaughterhouse or knacker's yard dies, the licence, unless previously revoked, enures for the benefit of his widow, or any other member of his family, until the expiration of two months from his death, or until the expiration of such longer period as the local authority may allow (*s*). [497]

Sign to be Displayed on Slaughterhouse or Knacker's Yard.—The occupier of a slaughterhouse or knacker's yard, in respect of which a licence issued by the 'local authority is in force, must display in a conspicuous position on the premises a legible notice with the words "Licensed Slaughterhouse" or "Licensed Knacker's Yard," as the case may be. Failure to comply with this requirement renders the person in default liable to a fine not exceeding 40*s.* (*t*). This section does not apply to a public slaughterhouse provided by a local authority. [498]

Bye-laws.—A local authority may make bye-laws for securing that slaughterhouses and knackers' yards are kept in a sanitary condition

(*k*) Food and Drugs Act, 1938, s. 57 (4); 31 Halsbury's Statutes 288.

(*l*) *Ibid.*, s. 57 (5); *ibid.*

(*m*) *Ibid.*, s. 57 (6); *ibid.*

(*n*) *Ibid.*, s. 87; *ibid.*, 307.

(*o*) *Ibid.*, s. 88; *ibid.*, 308.

(*p*) *Ibid.*, s. 90; *ibid.*

(*q*) *Ibid.*, s. 58; *ibid.*, 287; and see *post*, p. 297.

(*r*) *Ibid.*, s. 58 (3); *ibid.*, 288.

(*s*) *Ibid.*, s. 97; *ibid.*, 312. See also note (*n*), *post*, p. 300.

(*t*) *Ibid.*, s. 59; *ibid.*, 289.

and are properly managed; for preventing cruelty therein; and requiring persons licensed to keep knackers' yards, to keep and produce when required records of animals brought into such a yard and of the manner in which those animals and the different parts thereof were disposed of (u). The M. of H. have issued a model series of bye-laws with respect to private slaughterhouses (a), and the procedure governing the making of such bye-laws is contained in the L.G.A., 1933 (b). With regard to bye-laws relating to cruelty, nothing in the Slaughter of Animals Act, 1933 (c), is to be so construed as restricting the power to make bye-laws for this purpose, and it would appear that such bye-laws may go beyond the scope of the Act of 1933 (d). The M. of H. is the confirming authority in respect of any such bye-law (e). Bye-laws made under sect. 58, Food and Drugs Act, 1938, do not apply to public slaughterhouses provided by local authorities (f). 【499】

Elimination of Private Slaughterhouses.—In order to reduce the number of private slaughterhouses, a local authority may either acquire by agreement any such premises within their district and discontinue the use of the premises as a slaughterhouse, or agree with the persons interested in any such premises for the discontinuance of slaughtering on those premises (g). Where a local authority have provided a public slaughterhouse (h), they may, by resolution, decide that after a date specified therein no fresh licences to keep premises as a slaughterhouse will be granted and that on the said date all licences in force will cease to have effect, provided that the resolution does not take effect until approved by the M. of H. (i). Immediately such a resolution has been passed, it must be published in the local press and a copy served upon every person holding a slaughterhouse licence. The Minister may not approve of the resolution until he has taken into consideration any representation made to him within a period of two months from the date of publication of the resolution, and unless he is satisfied that there will be adequate slaughterhouse accommodation to meet the needs of the inhabitants of the district (k). The resolution may exempt any specific slaughterhouse, and, subject to the approval of the Minister, may enable the local authority to grant for special reasons a fresh licence. The Minister may modify the original resolution by inserting such an exemption or reservation (l). A licence granted in accordance with the terms of such a resolution, either by exemption or reservation, must be issued subject to such conditions, including a condition that during a specified period a renewal of the licence will not be refused on any ground except the unsuitability of the holder or of the premises, as the Minister in approving the resolution or the grant of a fresh licence may determine to be reasonable (m). Where any premises duly licensed as a slaughterhouse

(u) Food and Drugs Act, 1938, s. 58 (1); 31 Halsbury's Statutes 288.

(a) Series VI., obtainable from H.M. Stationery Office.

(b) S. 250; 26 Halsbury's Statutes 459.

(c) 26 Halsbury's Statutes 647; and see post, p. 299.

(d) Food and Drugs Act, 1938, s. 58 (2); 31 Halsbury's Statutes 288.

(e) *Ibid.*, s. 91; *ibid.*, 308.

(f) *Ibid.*, s. 60 (3); *ibid.*, 289.

(g) *Ibid.*, s. 61 (1); *ibid.*, 290.

(h) See *ante*, p. 293.

(i) Food and Drugs Act, 1938, s. 61 (2); 31 Halsbury's Statutes 289.

(k) *Ibid.*, s. 61 (3); *ibid.*, 290.

(l) *Ibid.*, s. 61 (4); *ibid.*

(m) *Ibid.*, s. 61 (5); *ibid.*

cease to be used as such as a result of the operation of a resolution referred to above, the owner and the occupier of such premises are entitled to compensation from the local authority for any loss sustained by them. In determining the amount of compensation, however, the arbitrator must have regard to the condition of the slaughterhouse and, if it is structurally defective or otherwise open to objection on sanitary grounds, the compensation must be reduced accordingly (*n*). Any question as to the amount of compensation payable must be determined by arbitration unless the amount claimed is less than £50, in which case the matter may be decided by a court of summary jurisdiction (*o*). As to arbitration proceedings, see the provisions of the P.H.A., 1936 (*p*), which are incorporated in the Food and Drugs Act, 1938 (*q*). Compensation is payable irrespective of whether the slaughterhouse was registered or licensed at September 30, 1939, provided the premises were used as such on that date (*r*). [500]

PROVISIONS WITH RESPECT TO SLAUGHTERING

Notice of Intention to Slaughter.—No person may slaughter any animal intended for sale for human consumption without giving not less than three hours' notice (*s*) of intention to slaughter (*t*) to the officer appointed for the purpose (usually the sanitary inspector or M.O.H.) by the local authority (*u*). Where slaughter takes place at fixed times on fixed days and written notice of this practice is given to the local authority, special notice is not required in each individual case. In the case of an emergency slaughter, as a result of illness, infection or injury, slaughter may take place, provided notice of slaughter is given to the local authority as soon as reasonably possible, whether before or after the slaughter takes place (*a*). If any part of the carcass or internal organs of an animal is found at the time of slaughter to be diseased or unsound, the person by or on whose behalf the animal was slaughtered must forthwith give notice of that fact to the local authority (*b*), irrespective of the giving of notice of intention to slaughter. This requirement applies in all cases, whether the slaughter is carried out at fixed times or not. [501]

Infectious Persons.—No person who is for the time being suffering from a notifiable disease (*c*) may take part in the slaughtering of animals intended for human consumption or in the handling of meat (*d*). [502]

Prohibition of Certain Classes of Work in Slaughterhouses.—No gut-scraping, tripe-cleaning, manufacture or preparation of articles of food for man or for animals, household washing or work of any nature other

(*n*) Food and Drugs Act, 1938, s. 61 (6) ; 31 Halsbury's Statutes 290.

(*o*) *Ibid.*, s. 86 ; *ibid.*, 307.

(*p*) S. 303 ; 29 Halsbury's Statutes 516.

(*q*) Food and Drugs Act, 1938, s. 96 ; 31 Halsbury's Statutes 111.

(*r*) *Ibid.*, s. 61 (7) ; *ibid.*, 291.

(*s*) Notices may be given orally ; art. 11 (2), Public Health (Meat) Regulations, 1924 ; S.R. & O., 1924, No. 1432.

(*t*) Public Health (Meat) Regulations, 1924, art. 8 ; S.R. & O., 1924, No. 1432.

(*u*) *Ibid.*, art. 11.

(*a*) *Ibid.*, art. 8.

(*b*) *Ibid.*, art. 9.

(*c*) Defined in s. 343, P.H.A., 1936 ; 29 Halsbury's Statutes 536 ; and see title INFECTIOUS DISEASES.

(*d*) Public Health (Meat) Regulations, 1924, art. 6 ; S.R. & O., 1924, No. 1432.

than is involved in the slaughter and dressing of carcasses, may be carried on in any slaughterhouse, and no articles may be stored therein except such implements, appliances, receptacles, and other articles as may be required for the slaughter of animals and processes directly connected therewith, including the dressing, hanging and storage of carcasses, the cleansing of the slaughterhouse and the removal of refuse (e). A slaughterhouse may not be used for the slaughter of any animal which previous to slaughter is not intended for human consumption (f). [503]

Methods of Slaughter of Animals.—No animal (g) may be slaughtered in a slaughterhouse or knacker's yard unless it is instantaneously slaughtered or by stunning is instantaneously rendered insensible to pain until death supervenes, and such slaughtering or stunning must be effected by means of a mechanically operated instrument in proper repair. Mechanical stunning is not made compulsory by the Act for any pig, boar, hog or sow in a slaughterhouse or knacker's yard unless a supply of electrical energy is available or could reasonably have been made available (gg); or to animals slaughtered, without the infliction of unnecessary suffering, by the Jewish method for the food of Jews and by a Jew duly licensed for the purpose by the Rabbinical Commission (h); or to animals slaughtered, without the infliction of unnecessary pain, by the Mohammedan method for the food of Mohammedans and by a Mohammedan; or to sheep, ewes, wethers, rams and lambs unless the local authority of the district have by resolution applied the provisions relating to mechanical stunning to such animals (i).

In the case of sheep, ewes, wethers, rams and lambs, every local authority was required, within a period of twelve months from July 28, 1933, to consider the question whether they would pass a resolution applying the provisions relating to mechanical stunning to such animals. In the absence of such a resolution, which may be passed by a local authority at any time, such animals are exempt from mechanical stunning. A local authority may, at any time, pass a resolution exempting either goats or kids, or both, from mechanical stunning. Where an authority pass a resolution, either applying mechanical stunning to sheep, etc., or exempting therefrom goats and/or kids, special notice of the meeting and of the intention to propose the resolution must be given to every member of the local authority not less than twenty-eight days before the meeting, and the like notice must be published in one or more of the newspapers circulating in the area of the authority. After the resolution has been passed, it must be advertised in the local press and otherwise as the local authority determine, and a copy must be sent to the Minister of Health. The resolution may be rescinded or varied by the local authority at any time, subject to compliance with the above provisions relating to the

(e) Public Health (Meat) Regulations, 1924, art. 12.

(f) *Ibid.*, art. 14.

(g) "Animal" means any horse, mare, gelding, pony, foal, colt, filly, stallion, ass, donkey, mule, bull, cow, bullock, heifer, calf, steer, ox, sheep, ewe, wether, ram, lamb, pig, boar, hog, sow, goat or kid; Slaughter of Animals Act, 1933, s. 9; 26 Halsbury's Statutes, 652.

(gg) But see note (d), p. 297, *ante*, as to bye-laws. Several local authorities have thus extended the requirement to pigs slaughtered in slaughterhouses where no electrical energy was available.

(h) Constituted in accordance with the provisions of the Slaughter of Animals Act, 1933, Sched. I.; 26 Halsbury's Statutes 652.

(i) *Ibid.*, s. 1; 26 Halsbury's Statutes 647.

passing of the resolution (*k*). It should be noted that the provisions relating to mechanical stunning only apply to animals slaughtered in a slaughterhouse or knacker's yard and not to animals slaughtered elsewhere. [504]

Prevention of Cruelty.—The Second Schedule to the Slaughter of Animals Act, 1933 (*l*), contains special provisions with respect to the prevention of cruelty in connection with the slaughter of animals. Care must be exercised in order to prevent cruelty in driving or bringing any animal to the place of slaughter; every occupier of a slaughterhouse or knacker's yard must provide such an animal with a sufficient supply of water and, when it is necessary to confine any animal for a period of more than twenty-four hours, with a sufficient quantity of food; before stunning any horse, mare, gelding, pony, foal, colt, filly, stallion, ass, donkey, mule, bull, ox, bullock, cow, heifer or steer, the head of the animal must be securely fastened to enable the animal to be felled with as little pain as practicable; so far as is practicable without structural alteration to premises existing in 1933, no animal must be slaughtered in the view of another animal; a person must not use a slaughtering instrument or stun any animal unless his ability and physical condition qualify him to do so without inflicting unnecessary pain, and such an instrument must not be used in such manner or in such circumstances or in such a state of want of repair as to incur the risk of causing unnecessary suffering to an animal; and, so far as is reasonably practicable, the occupier of a slaughterhouse or knacker's yard must not cause or allow any blood or other refuse to flow therefrom, so as to be within the sight or smell of any animal, or to be deposited in the waiting pens or lairs. [505]

Licensing of Slaughtermen.—No animal may be slaughtered or stunned in a slaughterhouse or knacker's yard except by a person who has been granted a licence by the local authority, provided that this requirement does not apply in the case of the slaughter of an animal under the Diseases of Animals Acts, 1894 to 1927 (*m*), by an officer of, or person employed by, the Minister of Agriculture and Fisheries. A licence to slaughter animals may not be granted to a person under the age of eighteen years, or unless he is a fit and proper person to hold such a licence. No rules have been laid down governing the fitness of persons to slaughter animals. Each application must be considered by the local authority on its merits, and there is in England and Wales no such statutory barrier as is embodied in the corresponding Scottish Act (*mm*) to the grant of a licence to a woman (*n*). A licence remains in force for a period of not more than three years and may be renewed from time to time at the discretion of the local authority. The licence enables the holder to slaughter or stun animals within the area of *any* local authority. Where the local authority consider that a person is no longer a fit and proper person to hold a licence, they may revoke the licence. If any person is aggrieved by the refusal of a local authority to grant a licence, or by the suspension or revocation thereof, he may, within a period of one month, appeal to a court of summary jurisdiction, whose decision in the

(*k*) Slaughter of Animals Act, 1933, s. 2; 26 Halsbury's Statutes, 648.

(*l*) 26 Halsbury's Statutes 653. This schedule reproduces with slight alterations requirements which had been embodied in the model bye-laws of the L.G.B. and M. of H., and had been widely adopted by local authorities.

(*m*) See title DISEASES OF ANIMALS.

(*mm*) Slaughter of Animals (Scotland) Act, 1928, s. 2.

(*n*) This may be important where a butcher's business is taken over by his widow.

matter is final. A fee not exceeding two shillings may be charged for a slaughterman's licence, and a fee not exceeding one shilling for every renewal thereof. Upon applying for a licence the applicant must state whether he holds a licence in any area or areas other than that to which his application relates and the names of any such areas; whether he has been refused a licence or has had a licence suspended or revoked in any other area and, if so, the name of that area; and whether he has any similar application pending in any other area and, if so, the name of that area (nn). [506]

Power of Entry.—Any M.O.H. or sanitary inspector duly appointed by a local authority may enter any slaughterhouse or knacker's yard at any time when business is or appears to be, in progress, or is usually carried on therein, for the purpose of ascertaining whether there is or has been any contravention of the Slaughter of Animals Act, 1933, but this provision does not apply to any premises for the time being comprised in an infected place within the meaning of the Diseases of Animals Acts, 1894 to 1937 (o).

Any authorised officer (p) has a right of entry to any slaughterhouse or knacker's yard, upon production of a duly authenticated document, at all reasonable hours, generally for the purpose of the performance by the local authority of their powers under the Food and Drugs Act, 1938, and for ascertaining whether there is or has been any contravention of that Act (q). Any person who wilfully obstructs any authorised officer acting in the execution of the above Act, is liable to a penalty (r). [507]

SPECIAL PROVISIONS WITH RESPECT TO KNACKERS' YARDS

No person may sell, or offer or expose for sale, for human consumption, any part of an animal which has been slaughtered in a knacker's yard, and any person convicted of so doing may have his licence, in respect either of a slaughterhouse or a knacker's yard, cancelled by the court, in addition to any other penalty imposed (s).

A local authority are empowered to make bye-laws requiring persons licensed to keep knacker's yards to keep, and produce when required, records of animals brought into the yards and of the manner in which those animals and the different parts thereof were disposed of (t).

Every person carrying on, or assisting in carrying on, the trade of a knacker must comply with the provisions of the First Schedule to

(nn) Slaughter of Animals Act, 1933, s. 3; 26 Halsbury's Statutes 649.

(o) *Ibid.*, s. 7; *ibid.*, 651.

(p) "Authorised officer" means, as respects any council, any officer of the council authorised by them in writing, either generally or specially, to act in matters of any specified kind or in any specified matter and, for the purpose of the provisions of the Act relating to the taking of samples, includes a police constable so authorised with the approval of the police authority concerned: Provided that (a) the M.O.H. and sanitary inspector of a council shall by virtue of their appointment be deemed to be authorised officers for all the purposes of the Act; (b) any member of the Royal College of Veterinary Surgeons employed by the council for the purpose of the inspection of food shall be deemed to be an authorised officer for the purpose of the examination and seizure of meat under the provisions of the Act relating to unsound food; (c) no officer of a council other than the M.O.H., a sanitary inspector or a member of the Royal College of Veterinary Surgeons employed as aforesaid shall be authorised to act in relation to the examination and seizure of meat: Food and Drugs Act, 1938, s. 100; 31 Halsbury's Statutes 313.

(q) Food and Drugs Act, 1938, s. 77; 31 Halsbury's Statutes 300.

(r) *Ibid.*, s. 78; *ibid.*, 302.

(s) *Ibid.*, s. 19; *ibid.*, 266.

(t) *Ibid.*, s. 58; *ibid.*, 288; and see *ante*, p. 296.

the Protection of Animals Act, 1911 (*u*). A constable has the right of entry to any knacker's yard for the purpose of examining whether there has been any contravention of the Act of 1911 (*x*). The name of the knacker, together with the word "knacker," must be painted or affixed in a conspicuous manner over the door or gate of the knacker's yard; the hair must be cut from the neck of any horse, ass or mule directly the animal has been delivered to the knacker; all animals must be slaughtered with as little suffering as possible, within two days from the time of delivery to the knacker, and any animal which is in pain must be slaughtered immediately; the knacker must enter in a book full details for the purpose of identifying every animal delivered to him and the book must be produced for inspection by a justice of the peace or police constable; no person under the age of sixteen years must be admitted to a knacker's yard during the process of slaughtering or cutting up the carcass of any animal; no animal must be killed in the sight of any other animal awaiting slaughter; and the knacker must not sell or part with alive, any animal which has been delivered to him (*a*).
[508]

LEGAL PROCEEDINGS

All offences under the Food and Drugs Act, 1938, may be prosecuted under the Summary Jurisdiction Acts (*b*). Any person against whom proceedings are taken under the Act of 1938 is, upon information being laid by him and on giving to the prosecution not less than three clear days' notice of his intention, entitled to have any other person, to whose act or default he alleges that the contravention of the provisions of the Act was due, brought before the court in the proceedings. If, after the contravention is proved, the original defendant proves that it is due to the act or default of the other person, that person may be convicted, the original defendant being acquitted of the offence if he proves that he used all due diligence to secure compliance with the provisions of the Act in question (*c*). [509]

LONDON

Under the P.H. (London) Act, 1936 (*d*), the business of a knacker is an "offensive trade" which cannot be established after the coming into force of the Act. The P.H. (London) Act, 1891 (*e*), which is repealed and replaced by the Act of 1936, used the words "establishes anew"; hence businesses established previous to August 5, 1891, may still be continued. The business of a slaughterer is an offensive trade which can only be established with the consent of the sanitary authority (*f*).

Metropolitan borough councils have power to grant annual licences for premises to be used as slaughterhouses, knackers' yards, cow-houses or places for the keeping of cows, at a fee not exceeding five shillings (*g*). Power of entry is given and a penalty is provided for the use of unlicensed premises. No person shall use premises in a borough

(*u*) 1 Halsbury's Statutes 381.

(*x*) Protection of Animals Act, 1911, s. 5; 1 Halsbury's Statutes 376.

(*a*) *Ibid.*, Sched. I; 1 Halsbury's Statutes 381.

(*b*) Food and Drugs Act, 1938, s. 80; 31 Halsbury's Statutes 303.

(*c*) *Ibid.*, s. 83; *ibid.*, 305.

(*d*) S. 140; 30 Halsbury's Statutes 522.

(*e*) S. 19; 11 Halsbury's Statutes 1036.

(*f*) S. 140, *supra*. See title OFFENSIVE TRADES.

(*g*) S. 144; 30 Halsbury's Statutes 526.

for receiving or keeping horses for slaughter or the carcasses of dead horses unless he holds a licence from the borough (*h*). A penalty for the use of unlicensed premises is provided. The county council may make bye-laws to be enforced by the borough councils with respect to the mode of conveying the carcasses of dead horses through public streets (*i*).

The Act contains a saving for slaughtering and slaughterhouses at the metropolitan cattle market (*k*). [510]

(*h*) S. 145; 30 Halsbury's Statutes 527.

(*i*) P.H. (London) Act, s. 143; 30 Halsbury's Statutes 526.

(*k*) *Ibid.*, ss. 140 (9), 142 (6), 144 (6); 30 Halsbury's Statutes 524, 526, 527.

SLUM CLEARANCE

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See also titles :

COMPENSATION ON ACQUISITION OF LAND ;
 COMPULSORY PURCHASE OF LAND ;
 HOUSING ;
 HOUSING ASSOCIATIONS ;

HOUSING SUBSIDIES ;
 INQUIRIES ;
 INSANITARY HOUSES ;
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INTRODUCTION

The term "slum clearance" refers to the demolition of groups of insanitary houses as a result of action taken by local authorities in accordance with the powers conferred upon them by the Housing Act, 1936. The term "slum" is not defined in the statute, nor does it occur in any of the law relating to housing. It is in fact a popular term, loosely and widely employed. "Slum" has been defined as "a street, alley, court, etc., situated in a crowded district of a town or city and inhabited by people of a low class or by the very poor; a number of these streets or courts forming a thickly populated neighbourhood or district of a squalid and wretched character" (a). It is important to emphasise, however, that the above description cannot be applied to every area dealt with by a local authority under the Housing Act. Many clearance areas, especially in the small towns and villages, are by no means "slums" in the above sense, but consist simply of blocks of houses in varying stages of disrepair, badly planned, and without essential conveniences and amenities. Although many of the condemned houses are occupied by poor persons, others are tenanted by artisans and workers in much better circumstances. In referring, therefore, to the work of demolition of insanitary houses by local authorities by the term "slum clearance," it should be remembered that in many instances the houses are in small groups, far from squalid in appearance, and not necessarily inhabited by very poor persons.

This article deals with the procedure involved in the clearance of unhealthy areas; the re-development of congested areas in large towns; and the provision of rehousing accommodation for displaced tenants. Reference should be made to the title **HOUSING**, which deals with the general powers of local authorities, and the title **INSANITARY HOUSES**, which deals with the repair and demolition of individually unfit houses.

(a) Shorter Oxford English Dictionary.

CLEARANCE AREAS

Definition of Clearance Area.—A clearance area is one in which all the houses are by reason of disrepair (b) or sanitary defects (c) unfit for human habitation, or are by reason of their bad arrangement, or the narrowness, or bad arrangement of the streets, dangerous or injurious to the health of the inhabitants of the area, and in which the other buildings, if any, are for a like reason dangerous or injurious to the health of the said inhabitants, and where the most satisfactory method of dealing with the conditions in the area is the demolition of all the buildings in it (d). A clearance area may be of any size, provided there is a minimum of two houses. Although all the buildings in the area must be suitable for demolition, the area may surround buildings which do not require to be demolished. In other words, the clearance area may *surround* "islands" of better property.

It will be seen that a clearance area may contain houses and other buildings. The term "other buildings" is not defined but it includes such premises as factories, works, shops and other business premises, churches, halls, stables, motor garages, sheds, and similar structures. Although these "other buildings" may be included in a clearance area, they must be *excluded* from the clearance order (e) if they are included in the area only by reason of their bad arrangement in relation to other buildings, or the narrowness or bad arrangement of the streets, rendering them dangerous or injurious to the health of the inhabitants of the area (f).

The term "house" includes any yard, garden, outhouses and appurtenances belonging thereto or usually enjoyed therewith (g) and sect. 26 (8) of the Housing Act, 1936 (h), extends the definition of building to include a hut, tent, caravan or other temporary or movable form of shelter which is used for human habitation and has been in the same enclosure for a period of two years next before action is taken by the local authority for the declaration of the clearance area. The dwelling-houses need not be confined to those occupied by members of the working-classes; an unoccupied house need not be excluded from a clearance area (i); a common lodging-house has been held to be a dwelling-house (j); a combined house and shop is a dwelling-house (k); a building divided into flats or separately occupied tenements, would also appear to be regarded as a dwelling-house (l); and houses closed compulsorily as unfit for habitation and later used as warehouses, do not cease to be dwelling-houses (m). [511]

(b) This term is not defined.

(c) "Sanitary defects" includes lack of air space or of ventilation, darkness, dampness, absence of adequate and readily accessible water supply or sanitary accommodation or of other conveniences, and inadequate paving or drainage of courts, yards or passages. Housing Act, 1936, s. 188 (1); 29 Halsbury's Statutes 682.

(d) Housing Act, 1936, s. 25 (1); 29 Halsbury's Statutes 584.

(e) See *post*, p. 309.

(f) Housing Act, 1936, Sched. III., para. 2; 29 Halsbury's Statutes 688.

(g) *Ibid.*, s. 188; *ibid.*, 680.

(h) 29 Halsbury's Statutes 586.

(i) *Robertson v. King*, [1901] 2 K. B. 265; 65 J. P. 453; 38 Digest 212, 467.

(j) *In Re Ross v. Leicester Corpns.* (1932), 96 J. P. 459; Digest (Supp.).

(k) *Premier Garage Co. v. Ilkeston Corpns.* (1933), 97 J. P. 786; Digest (Supp.).

(l) *Kirkpatrick v. Maxwelltown Town Council* (1912), S. C. 288; 38 Digest 212, c.

(m) *Morgan v. Kenyon* (1913), 78 J. P. 66; 38 Digest 182, 225.

Types of Houses Included in Clearance Area.—Before buildings may be included in a clearance area the local authority must be satisfied :

- (1) that the houses in the area are unfit for human habitation by reason of disrepair or sanitary defects ; or
- (2) that they (the houses) are by reason of their bad arrangement, or the narrowness or bad arrangement of the streets, dangerous or injurious to the health of the inhabitants of the area ; and
- (3) that the “ other buildings ” in the area are by reason of their bad arrangement, or the narrowness or bad arrangement of the streets, dangerous or injurious to the health of the inhabitants of the area ; and
- (4) that the most satisfactory method of dealing with the conditions in the area is the demolition of all the buildings in it (n).

Buildings may not be included in a clearance area if the local authority have previously approved of proposals submitted by the owner, involving the re-development of the land occupied by such buildings, so long as the re-development is proceeding according to the approved proposals and within the specified time limits (o). A house may not be included in a clearance area if it is subject to the provisions of sect. 51, Housing Act, 1936 (p), a certificate of fitness having been issued by the local authority and still in operation.

In determining for the purpose of the Housing Act, whether a house is fit for human habitation, regard must be had to the extent, if any, to which by reason of disrepair or sanitary defects, the house falls short of the provisions of any bye-laws (q) in operation in the district or of any enactment in any local Act in operation in the district dealing with the construction and drainage of new buildings and the laying out and construction of new streets or of the general standard of housing accommodation for the working classes in the district (r).

It is not an easy matter to define precisely the degree of unfitness which would render a house liable to be included in a clearance area. The courts have considered the matter on several occasions (s), but the decisions are not all in complete agreement. In general, local authorities only include in clearance areas those houses which are so unfit as to be incapable of repair without complete reconstruction or where the cost of repair is unreasonable. Actually, it has been held (t) that the decision as to the fitness or otherwise of a house is not a matter for the court but for the local authority subject to the confirmation of the M. of H., in whose hands the matter has been left by Parliament, and in this connection the Minister must act in a quasi-judicial capacity (u).

(n) Housing Act, 1936, s. 25 ; 29 Halsbury's Statutes 584.

(o) *Ibid.*, s. 50 (1) ; 29 Halsbury's Statutes 604.

(p) 29 Halsbury's Statutes 605 ; and see Vol. VII., p. 283.

(q) It should be noted that the particular class of bye-laws is not specified, and it is submitted that a local authority are entitled to utilise the provisions of any of their bye-laws, e.g. building bye-laws, in deciding as to the fitness or otherwise of the house under consideration.

(r) Housing Act, 1936, s. 188 (4) ; 29 Halsbury's Statutes 688.

(s) *Hall v. Manchester Corp.* (1915), 79 J. P. 385 ; 38 Digest 212, 470 ; *McCoy v. Borough of Cork* (1934), 1 R. 779 ; Digest Supp. ; *Jones v. Geen*, [1925] 1 K. B. 659 ; 31 Digest 315, 4568 ; *Estate and Trust Agencies* (1927), Ltd. v. *Singapore Improvement Trust*, [1927] 3 All E. R. 324 ; Digest Supp.

(t) *R. v. Bowman, South Shields (Thames Street) Clearance Order, 1931*, [1932] 2 K. B. 621 ; 96 J. P. 207 ; Digest (Supp.).

(u) *Errington v. Minister of Health*, [1935] 1 K. B. 249 ; 99 J. P. 15 ; Digest (Supp.).

The principal defects which would justify the inclusion of a house in a clearance area include general dilapidation of the structure (walls, roof, floors, windows, plasterwork, etc.) ; serious dampness, particularly rising damp due to absence of damp proof courses ; inadequate lighting and ventilation ; absence of essential conveniences—sanitary accommodation, water supply, washing facilities, drainage and facilities for preparing, cooking and storing food ; and inadequate external paving and surface drainage. Bad planning and internal arrangement of the house are also contributory factors of some importance.

A local authority may include in a clearance area land belonging to them which they might have included in such area if it had not belonged to them (a), provided that working-men's dwellings which were acquired by the authority under any Act or order mentioned in sect. 137 of the Housing Act, 1936 (b), and in such circumstances that the provisions of para. (1) of the Fifth Schedule to the Housing Act, 1925 (c), or the provisions of para. (1) of the Eleventh Schedule to the Housing Act, 1936 (d), apply, may not be so included. For the purposes of these provisions, the term "working class" has been defined (e). [512]

Representation of Clearance Area.—A local authority become aware of the conditions in a proposed clearance area either as a result of an official representation or by other information in their possession (f).

An "official representation" means in the case of any local authority, a representation made to that authority by the M.O.H. thereof, and includes also, in the case of a rural district or of an urban district with a population of less than ten thousand, a representation made by the M.O.H. of the county council and forwarded by that council to the council of the rural or urban district concerned, and in the case of a metropolitan borough council, a representation made by the M.O.H. of the L.C.C. and forwarded to the borough council (g). An official representation must be in writing and the local authority are bound to consider it as soon as possible. A M.O.H. is bound to make an official representation whenever he is of the opinion that any area in the district ought to be dealt with as a clearance area. If a justice of the peace, or any four or more local government electors, or, in the case of a rural district, the parish council of any parish in the area, complain to the M.O.H. in writing that an area should be dealt with as a clearance area, he must forthwith inspect the area and report to the local authority whether or not the area should be dealt with as a clearance area (h). The form of official representation has not been prescribed, but it should follow closely the wording of sub-sect. (1) of sect. 25 of the Housing

(a) Housing Act, 1936, s. 28 ; 29 Halsbury's Statutes 587.

(b) 29 Halsbury's Statutes 660 ; relating to rehousing obligations of statutory undertakers.

(c) 29 Halsbury's Statutes 1074.

(d) *Ibid.*, 699.

(e) The expression "working class" includes mechanics, artisans, labourers and others working for wages, hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others, except members of their own family, and persons other than domestic servants whose income in any case does not exceed an average of three pounds a week, and the families of any of such persons who may be residing with them. Housing Act, 1936, Sched. XI., para. 11 (e) ; 29 Halsbury's Statutes 700.

(f) Housing Act, 1936, s. 25 (1) ; 29 Halsbury's Statutes 587.

(g) *Ibid.*, s. 188 ; *ibid.*, 680.

(h) *Ibid.*, s. 154 ; *ibid.*, 666.

Act, 1936 (*i*), and contain a schedule of the buildings included in the area. It is unwise to include with the official representation detailed information relating to the condition of each individual building. Such particulars must be available for the consideration of the local authority, but they should be quite distinct from the official representation.

In some districts it may be more convenient for the matter to come before the local authority in the form of a report from their sanitary inspector, or the members of the authority (or more commonly, a committee of the council) may themselves inspect the area and decide to deal with it as a clearance area. [513]

Declaration of Clearance Area.—Upon receipt of an official representation or other information, the local authority must, by resolution, declare the area to be a clearance area if they are satisfied that the conditions laid down in sect. 25 of the Housing Act, 1936, exist (*k*). Before making such a declaration, the authority *must* be satisfied :

- (1) that the conditions in the area are such as are defined in sect. 25, *supra*; and
- (2) that the most satisfactory method of dealing with such conditions is the demolition of all the buildings in the area; and
- (3) that they can provide suitable accommodation for persons of the working classes living in the area, in advance of the displacements which will occur as the buildings are demolished; and
- (4) that the resources of the local authority are sufficient for the purpose of carrying the resolution into effect.

It has been held that a local authority have satisfied the statute if they consider a report by one or more of their officers dealing with the matter (*l*), and it is not necessary for the members of the authority actually to visit the area themselves. At the same time, it is generally a wise course for them to do so, in order that they can more clearly understand the report of their officers. In considering the action to be taken in regard to a proposed clearance area, the local authority are not bound to hear any of the owners of the property concerned (*m*), and in point of fact it is rare for an authority to do so. In dealing with an individual unfit house (*n*), on the other hand, the Act requires the authority to afford to the owner an opportunity of being present when the condition of the house is being considered by them (*o*). In this connection, however, it must be remembered that an owner of a house in a clearance area has the right of appeal to the M. of H., in which case a public local inquiry must be held, at which the owner is entitled to state his case (*p*).

The clearance area must be defined on a map, which should be on the 1/500 or approximate scale, and the clearance area coloured pink. [514]

(*i*) 29 Halsbury's Statutes 584.

(*k*) See *ante*, p. 305.

(*l*) *Cohen v. West Ham Corp.*, [1933] Ch. 814; 96 J. P. 155; Digest (Supp.).

(*m*) *Fredman v. M. of H.* (1935), 100 J. P. 104; Digest (Supp.).

(*n*) See title INSANITARY HOUSES.

(*o*) Housing Act, 1936, s. 11; 29 Halsbury's Statutes 574.

(*p*) See *post*, p. 326.

Procedure after Declaration of Clearance Area.—After the resolution defining the clearance area has been passed, the local authority must forward to the M. of H. :

- (1) a copy of the resolution, together with map showing the clearance area ;
- (2) a statement of the number of persons of the working classes residing in the area ; and
- (3) an undertaking to carry out or secure the carrying out of such rehousing as the Minister considers necessary within a period of time specified by him (q).

The form of statement setting out the number of persons of the working classes resident in the clearance area has been prescribed by the M. of H. (r).

As soon as a local authority have declared an area to be a clearance area, they must proceed to secure the clearance of the area either by making a *clearance order* which requires the owners of the buildings in the area to demolish them, or by making a *compulsory purchase order* which empowers the local authority to purchase the land and themselves undertaking, or otherwise securing, the demolition of the buildings in the area (s). If desired, an authority may make a clearance order in respect of part of a clearance area and a compulsory purchase order in respect of the remainder of the area. [515]

CLEARANCE ORDERS

Form of Clearance Order.—The clearance order must be in the prescribed form (t) as settled by the M. of H. (u), be made under the seal of the local authority and signed by the clerk or his lawful deputy (a). Houses or other buildings properly included in the clearance area only on the ground that by reason of their bad arrangement in relation to other buildings, or the narrowness or bad arrangement of the streets, they are dangerous or injurious to the health of the inhabitants of the area, must be excluded from the clearance order, except in the case of a dwelling (or a building used partly as a dwelling), if any part is by reason of disrepair or sanitary defects unfit for human habitation (b). The practical effect of this provision is that if the local authority desire the demolition of such buildings they must acquire them at the full market value, and in such a case the procedure would be by way of a compulsory purchase order and not a clearance order. [516]

Clearance Order Map.—The clearance order must describe by reference to a map the area to which it applies, and such map should be on the 1/500 or approximate scale and should show the clearance area coloured pink. Each house, building or other property must be numbered consecutively on the map, notwithstanding that several may belong to one owner, the outside boundaries of each being defined by hard lines so that it may be seen to what properties each number

(q) Housing Act, 1936, ss. 25 (2) and 45 (1); 29 Halsbury's Statutes 585, 601.

(r) Circular 1138, M. of H., August, 1930, Part III., Appendix I.

(s) Housing Act, 1936, s. 25 (3); 29 Halsbury's Statutes 585.

(t) *Ibid.*, Sched. III., para. 1; *ibid.*, 688.

(u) Housing Act (Form of Orders and Notices) Regulations, 1937, Form 13; S.R. & O., 1937, No. 78.

(a) Housing Act, 1936, s. 164 (1); 29 Halsbury's Statutes 671.

(b) *Ibid.*, Sched. III., para. 2; *ibid.*, 688.

applies (c). The order must fix a date or dates by which the several buildings are to be vacated (d), such dates being recorded in column 6 of the Schedule to the Clearance Order. The dates fixed for the vacation of the premises must not be less than twenty-eight days from the date of operation of the order (e) and should be so arranged that the displacement of families will synchronise with the availability of the new houses. It is not always an easy matter to determine at the onset the correct dates and it is wise to make the vacation period short rather than long, securing the approval of the M. of H. to such extended period as may be found necessary. It is extremely important that great care should be taken in the preparation of the schedule to the order. Every building must be carefully described and referenced, and the names of the owners, lessees and occupiers (except tenants for a month or less) entered in the appropriate columns. A local authority are empowered to require information as to the ownership of any premises which it is proposed to include in a clearance area (f) and a requisition for information as to ownership should be served in respect of each building to be so included. [517]

Advertisement of Clearance Order.—Before submitting the order to the M. of H. for confirmation (g), it must be advertised by publication of notice in the prescribed form (h) in one or more newspapers circulating in the district (i). [518]

Notice of Clearance Order.—Before submitting the order to the Minister of Health for confirmation, a notice in the prescribed form (k) must be served on every owner, lessee and occupier (except tenants for a month or less) of any building included in the area and so far as it is reasonably practicable to ascertain such persons, on every mortgagee thereof, stating the effect of the order, that it is about to be submitted to the Minister for confirmation, and specifying the time within and the manner in which objections thereto can be made (l). [519]

Submission of Clearance Order to Minister of Health.—After the advertisement of the clearance order and the service of the requisite notices upon all interested parties, the local authority must submit the order to the M. of H. for confirmation (m). The order must be accompanied by :

- (1) copy of the official representation or other information on which the resolution was passed ;
- (2) certified copy of the clearance order map ;
- (3) copies of newspapers containing advertisements, and of notices ;
- (4) certificate of service of notices ; and
- (5) formal resolution of the local authority applying for confirmation of the order (n).

(c) Circular 1138, M. of H., August, 1930, para. 31 (1), (2).

(d) Housing Act, 1936, Sched. III., para. 1 ; 29 Halsbury's Statutes 688.

(e) See *post*, p. 311.

(f) Housing Act, 1936, s. 168 ; 29 Halsbury's Statutes 672.

(g) See *post*, p. 311.

(h) Housing Act (Form of Orders and Notices) Regulations, 1937, Form No. 15, S.R. & O., 1937, No. 78.

(i) Housing Act, 1936, Sched. III., para. 3 ; 29 Halsbury's Statutes 689.

(k) S.R. & O., 1937, No. 78, Form No. 14.

(l) Housing Act, 1936, Sched. III., para. 4 ; 29 Halsbury's Statutes 689.

(m) Circular 1138, M. of H., August, 1930, para. 31 (1), (5).

Frequently one composite resolution is passed by the authority including the making of the clearance order, rehousing undertaking, and application for confirmation by the M. of H. Separate resolutions, passed on different dates, can, however, be adopted if it is found more convenient to do so. [520]

Confirmation and Date of Operation of Clearance Order.—When a clearance order has been made and served upon owners, etc., of buildings in the area, they may appeal to the Minister of Health against the terms of the order within a period of time specified in the order, which must not be less than fourteen days (n). In the event of an appeal, the Minister must hold a public local inquiry before giving his decision as to the confirmation or otherwise of the order. If there is no appeal an inquiry need not be held. After a clearance order has been confirmed by the Minister, notice of its confirmation must be published in the prescribed form (o) and served upon every person who objected to the confirmation of the order and appeared at the public inquiry, and any person aggrieved by the order, as confirmed by the Minister, may appeal to the High Court within a period of six weeks. Subject to the right of appeal referred to, a clearance order becomes operative six weeks from the date on which notice of its confirmation is published. So soon as a clearance order becomes operative, the local authority must serve a copy of it upon every person on whom a notice was served by them of their intention to submit the order to the M. of H. for confirmation (p). [521]

Recovery of Possession of Buildings Subject to a Clearance Order.—When a clearance order becomes operative, the local authority must serve notice upon the occupier of every building to which the order relates, stating the effect of the order, the date by which the building is to be vacated, and stating that such occupier must quit the premises by the date stated or before the expiration of twenty-eight days from the service of the notice, whichever is the later. In the event of the occupier failing to vacate the premises by the required date, either the local authority or the owner may apply to the court, who may order vacant possession to be given within a period of not less than two nor more than four weeks, as they may think fit. The local authority are entitled to recover from the owner of the premises any expenses incurred in obtaining possession thereof (q). Nothing in the Rent and Mortgage Interest Restrictions Acts, 1920 to 1933 (r), prevents possession of a house being obtained, possession of which is required for the purpose of enabling a local authority to exercise any of their powers under the Housing Acts (s). A county court may determine any lease affecting premises in respect of which a clearance order has become operative, either unconditionally or subject to such terms and conditions as the county court judge may decide (t). [522]

(n) As to appeals, see *post*, p. 326.

(o) S.R. & O., 1937, No. 78, Form No. 16.

(p) Housing Act, 1936, Sched. II.; 29 Halsbury's Statutes 687.

(q) *Ibid.*, s. 155; *ibid.*, 667.

(r) 10 Halsbury's Statutes 332 (1920 Act), 361, 365 (1923 Acts), 374 (1925 Act); 26 Halsbury's Statutes 265 (1933 Act).

(s) Housing Act, 1936, s. 156; 29 Halsbury's Statutes 667.

(t) *Ibid.*, s. 160; *ibid.*, 669.

COMPULSORY PURCHASE ORDERS

Instead of making a clearance order requiring the owners to demolish the buildings included in the clearance area, a local authority may purchase the land in the area by agreement or they may make a compulsory purchase order (*u*). It should be noted, however, that the Minister of Health has no authority to confirm the compulsory purchase of land in a clearance area which has already been cleared before the order was confirmed (*a*). Where an authority decide to purchase the land comprised in a clearance area, they may also purchase any land which is surrounded by the clearance area, the acquisition of which is reasonably necessary for the purpose of securing a cleared site of convenient shape and size, and also any adjoining land which may be reasonably necessary for the satisfactory development of the cleared site (*b*). It has been held (*c*) that in the case of an appeal the court must decide whether there is any material on which the Minister of Health could come to the conclusion that the acquisition of land surrounded by or adjoining a clearance area was reasonably necessary for the future use or development of the cleared site. [523]

Form of Compulsory Purchase Order.—The compulsory purchase order must be in the prescribed form (*d*) ; where a separate order is made in respect of the purchase of land surrounded by or adjoining a clearance area, a special form of order has been prescribed (*e*). The order must describe by reference to a map, the land to which it applies, and comply with the requirements of the First Schedule to the Housing Act, 1936 (*f*). The order must show, in the prescribed manner, what parts, if any, of the land purchased compulsorily are outside the clearance area, and what buildings, if any, to be purchased compulsorily are included in the clearance area only on the ground that by reason of their bad arrangement in relation to other buildings, or the narrowness or bad arrangement of the streets, they are dangerous or injurious to the health of the inhabitants of the area (*g*). [524]

Compulsory Purchase Order Map.—The compulsory purchase order must describe by reference to a map the land to which it relates, on the 1/500 or approximate scale, prepared in a similar manner to the clearance order map (*h*). Land included in a clearance area, which is subject to a compulsory purchase order, must be coloured pink, whereas land surrounded by or adjoining a clearance area which is subject to such an order, must be coloured grey. [525]

Advertisement and Notice of Compulsory Purchase Order.—Before a compulsory purchase order is submitted to the Minister of Health for confirmation, notice in the prescribed form (*i*) must be published in the local press and notice in the prescribed form (*k*) must be served upon

- (*u*) Housing Act, 1936, s. 29 ; 29 Halsbury's Statutes 588.
- (*a*) *Marriott v. M. of H.*, [1936] 2 All E. R. 865 ; 100 J. P. 432 ; Digest (Supp.).
- (*b*) Housing Act, 1936, s. 27 ; 29 Halsbury's Statutes 587.
- (*c*) *Burgesses of Sheffield v. M. of H.* (1935), 100 J. P. 99 ; Digest (Supp.).
- (*d*) S.R. & O., 1937, No. 78, Form No. 22.
- (*e*) *Ibid.*, Form No. 26.
- (*f*) 29 Halsbury's Statutes 684.
- (*g*) Housing Act, 1936, Sched. I., para. 9 ; 29 Halsbury's Statutes 686.
- (*h*) See *ante*, p. 308.
- (*i*) S.R. & O., 1937, No. 78, Forms Nos. 23 and 27.
- (*k*) *Ibid.*, Forms No. 24 and 28.

every owner, lessee and occupier (except tenants for a month or less), stating the effect of the order and detailing the manner in which objections can be made (*l*). [526]

Submission of Compulsory Purchase Order to Minister of Health.—A compulsory purchase order made in respect of land in a clearance area must be submitted to the Minister of Health within six months, and in respect of land surrounded by or adjoining a clearance area, within twelve months, after the date of the resolution declaring the area to be a clearance area, or such longer period as the Minister of Health may allow (*m*). The order must be accompanied by :

- (1) copies of newspapers containing advertisements and of notices ;
- (2) certificate of service of notices ;
- (3) certified copy of map ;
- (4) formal resolution of the local authority applying for confirmation of the order ;
- (5) copy of the official representation or other information on which the area was declared a clearance area ; and
- (6) a statement showing, in the prescribed manner,
 - (a) what parts of the land to which the order applies are :
 - (i.) part of the clearance area ;
 - (ii.) land surrounded by the clearance area ;
 - (iii.) land adjoining the clearance area ; and
 - (b) what parts of the land within the clearance area are to be appropriated for rehousing (*n*). [527]

Confirmation of Compulsory Purchase Order.—The Minister of Health may not confirm a compulsory purchase order so as to authorise the local authority to purchase as land within the clearance area, land shown in the order as submitted as being outside the area, or authorise the authority to purchase any building on less favourable terms with respect to compensation than the order would have authorised them to purchase the building if the order had been confirmed without modification (*o*). In the event of the Minister being of the opinion that any land included in the clearance area ought not to have been so included, he must exclude such land for all purposes from the clearance area, but he may authorise the local authority to purchase such land as land surrounded by or adjoining the clearance area (*p*). In other words, such land would be transferred from the "pink" to the "grey" area, thereby increasing the amount of compensation payable by the local authority (*q*). In confirming a compulsory purchase order, the Minister may so modify the order as to sever the area into two or more distinct parts, but the confirmed order applies as if those areas formed one clearance area (*r*).

Upon confirmation of a compulsory purchase order, the local authority must proceed to acquire the various properties comprised in the area, the procedure being laid down in the Lands Clauses Con-

(*l*) Housing Act, 1936, Sched. I., para. 3 ; 29 Halsbury's Statutes 685.

(*m*) *Ibid.*, s. 29 (2) ; *ibid.*, 588.

(*n*) Circular 1138, M. of H., August, 1930, para. 32 (1), (4) and para. 32 (2).

(*o*) Housing Act, 1936, Sched. I., para. 10 ; 29 Halsbury's Statutes 687.

(*p*) *Ibid.*, s. 27 ; see *ante*, p. 309.

(*q*) *Ibid.*, Sched. I., para. 11 ; 29 Halsbury's Statutes 687.

(*r*) *Ibid.*, para. 12 ; *ibid.*

solidation Act, 1845 (*s*), and the Acquisition of Land (Assessment of Compensation) Act, 1919 (*t*), and the rules made thereunder. Notice to treat must be served upon all persons interested in the property, and the notice must state particulars of the lands, demand information from each party of their estate or interest in such lands, and state that the local authority are willing to treat for the purchase of the land (*u*). If agreement cannot be reached between the owners and the local authority, the matter must be settled by arbitration (*a*). The powers of compulsory purchase must be exercised within a period of three years (*b*), but it is sufficient if the notice to treat is served and the actual purchase need not be completed (*c*). As to compulsory purchase of land, see title COMPULSORY PURCHASE OF LAND, Vol. III., p. 404, and title HOUSING, Vol. VII., p. 74. [528]

Date of Operation of Compulsory Purchase Order.—A compulsory purchase order becomes operative in a similar way to a clearance order (*d*). [529]

Provisions with Respect to Licensed Premises.—If premises used as an old on-licence (*e*) are purchased by a local authority in accordance with Part III. of the Housing Act, 1936, the authority, before purchasing the premises, may undertake that in the event of the renewal of the licence being refused, they will pay to the compensation authority towards the compensation payable on such refusal under the Licensing (Consolidation) Act, 1910 (*f*), such compensation as may be specified in the undertaking, and such sum must be treated as part of the expenses of the authority in purchasing the land. If the local authority decide to surrender the licence, after purchasing or contracting to purchase the premises, the licensing justices may refer the matter to the compensation authority, who, if satisfied that the licence, if not surrendered, might properly have been dealt with as a redundant licence, must contribute out of the compensation fund towards the compensation paid by the local authority in respect of the purchase of the premises, a sum not exceeding the compensation which would have been payable under the Licensing (Consolidation) Act, 1910, on the refusal of the renewal of the licence (*g*). [530]

Provisions with Respect to Statutory Undertakers.—A local authority are entitled to execute works for the removal or alteration of any apparatus belonging to statutory undertakers (*h*) which is on, under or over land purchased by such an authority, or on, under, or over a street (*i*) running over, through, or adjoining any such land, where it is reasonably necessary to do so for the purpose of enabling the authority

(*s*) 2 Halsbury's Statutes 1113.

(*t*) *Ibid.*, 1176.

(*u*) 1845 Act, s. 18; 2 Halsbury's Statutes 1120.

(*a*) 1919 Act, s. 1; *ibid.*, 1176.

(*b*) 1845 Act, s. 123; *ibid.*, 1156.

(*c*) *Salisbury, Marquis of v. Great Northern Rail. Co.* (1852), 17 Q. B. 840; 11 Digest 219, 1039.

(*d*) See *ante*, p. 311.

(*e*) Defined in the Licensing (Consolidation) Act, 1910, Sched. II.; 9 Halsbury's Statutes 1047.

(*f*) S. 20; 9 Halsbury's Statutes 1000.

(*g*) Housing Act, 1936, s. 47; 29 Halsbury's Statutes 602.

(*h*) Defined in Housing Act, 1936, s. 188 (1); *ibid.*, 682.

(*i*) "Street" includes any court, alley, passage, square or row of houses, whether a thoroughfare or not; *ibid.*; *ibid.*

to exercise any of the powers conferred upon them by Part III. of the Housing Act, 1936. Where such action is contemplated, the authority must serve notice in writing upon the undertakers of their intention, with particulars of the proposed works and the manner in which they are to be executed, together with plans and sections thereof. The work may not commence within a period of twenty-eight days from the date of service of the notice, and the undertakers may within that period serve notice in writing upon the authority objecting to the execution of the proposed works or any of them, on the ground that they are not necessary, or state special requirements or conditions to be observed in the execution of the proposed works, or the execution of other works, which the undertakers consider necessary. If such an objection is made by the statutory undertakers and not withdrawn, the local authority may not proceed with the work until the matter has been settled by arbitration. An authority must pay reasonable compensation for any damage which is sustained by statutory undertakers in the exercise of any of the above powers, and in case of dispute the amount must be settled by arbitration. In any case where as a result of the stopping up, diversion, or alteration of the level, or width of a street by a local authority in accordance with their powers under the Housing Act, 1936, the removal or alteration of apparatus belonging to statutory undertakers or the execution of works for the provision of substituted apparatus, whether permanent or temporary, is reasonably necessary for the purposes of the undertaking, the undertakers may serve notice in writing upon the authority requiring them, at their expense, to carry out the necessary work. A local authority are entitled to object to the requirements of the undertakers within a period of twenty-eight days from the date of service of the notice upon them, and the matter must then be settled by arbitration. Before commencing any works which they are authorised or required under the foregoing provisions to execute, the local authority must, except in case of emergency, serve notice in writing upon the undertakers at least seven days before the work is to commence, and the undertakers are entitled to elect to carry out the work themselves at the cost of the local authority. In the case of an arbitration as to the amount of compensation to be paid by a local authority in respect of damage sustained by statutory undertakers, the arbitrator must be appointed under the Acquisition of Land (Assessment of Compensation) Act, 1919 (j), and in all other cases the matter in dispute must be determined by an arbitrator appointed by agreement or, failing agreement, by the M. of H. (k). [581]

Extinguishment of Ways, Easements, etc.—Subject to the approval of the M. of H., a local authority may, by order, extinguish any public right of way over any land purchased by them under Part III. of the Housing Act, 1936. Such an order must be published in the prescribed manner (l) and if any objection is made within six weeks from the date of publication, the Minister must not approve the order until a public local inquiry has been held. Such an order may be made and confirmed in advance of the purchase of the land, to take effect from the date on which the buildings on the land are vacated. Upon completion of the

(j) 2 Halsbury's Statutes 1176.

(k) Housing Act, 1936, s. 49 ; 29 Halsbury's Statutes 604.

(l) Housing Act (Extinguishment of Public Right of Way) Regulations, 1937, S.R. & O., 1937, No. 79, Sched. ; 30 Halsbury's Statutes 716.

purchase of any land, all private rights of way and all rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land and all other rights or easements are extinguished, but any person sustaining loss as a result thereof, is entitled to compensation from the local authority, to be determined in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919 (m). The rights of statutory undertakers are not affected (n). [582]

Compensation for Land Acquired Compulsorily.—Subject to the provisions of sect. 40 of the Housing Act, 1936 (o), which are summarised below, the compensation payable in respect of land purchased compulsorily in accordance with the provisions of Part III. of the Housing Act, 1936, is assessed in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919 (m).

The compensation to be paid for land, *including any buildings thereon*, comprised in a clearance area, is the value at the time the valuation is made of the land as a cleared site, available for development in accordance with the requirements of the building bye-laws. In other words, no compensation is payable in respect of buildings in a clearance area (p). Where, however, houses were included in the clearance area only on the ground that by reason of their bad arrangement in relation to other buildings, or the bad arrangement of the streets, they were dangerous or injurious to the health of the inhabitants of the area, compensation is payable in accordance with the Act of 1919, as modified by the Fourth Schedule to the Housing Act, 1936 (q). Where buildings other than houses are included in a clearance area, the compensation payable in respect of their compulsory purchase is also based on the Act of 1919 as modified by the Fourth Schedule to the Act of 1936 (r), and the compensation for land surrounded by or adjoining a clearance area, is assessed in a similar manner. Summarised shortly, compensation is payable as follows :

- | | |
|--|---|
| (1) Houses included in a clearance area as unfit for human habitation on account of disrepair or sanitary defects. | Site value. |
| (2) Houses included in clearance area only on account of their bad arrangement or the bad arrangement of the streets. | Market value subject to modifications in Sched. IV., Housing Act, 1936. |
| (3) Other buildings, included in the clearance area on account of bad arrangement or the bad arrangement of the streets. | Do. |
| (4) Land surrounded by or adjoining a clearance area. | Do. |

In the case of (2) and (3) above, full market value must be paid subject to the following modifications. If the arbitrator is satisfied that the rental of the premises has been enhanced by reason of its use

(m) 2 Halsbury's Statutes 1176.

(n) Housing Act, 1936, s. 46; 29 Halsbury's Statutes 601.

(o) 29 Halsbury's Statutes 598.

(p) But see as to payments for well-maintained houses, *post*, p. 317.

(q) 29 Halsbury's Statutes 689.

(r) Housing Act, 1936, s. 40; 29 Halsbury's Statutes 598.

for illegal purposes or on account of its being overcrowded (*s*), the calculation of the compensation, so far as the rental is concerned, must be made on the rental which would have been obtained if the premises were not used for illegal purposes or were not overcrowded. If the arbitrator is satisfied that the premises are in a state of defective sanitation, or are not in reasonably good repair, the compensation payable is the estimated value of the premises if put into proper order, less the estimated cost of repairing the premises. The arbitrator must also have regard to and make an allowance in respect of any increased value which he considers will accrue to other premises belonging to the same owner, which will occur as a result of the demolition of the buildings by the local authority. It should be noted that this enhanced value must only be taken into account when the other premises belong to the same owner as the buildings to be demolished. Where the amount of compensation payable in respect of any building is reduced on account of illegal use, overcrowding, defective sanitation, disrepair or enhanced value of other premises, the arbitrator must include in his award a statement showing separately for each of those items, the amount of any reduction (*t*). [533]

Arrangements where Acquisition of Land in a Clearance Area is Found to be Unnecessary.—In cases where a compulsory purchase order has been submitted to the Minister of Health, application may be made to the Minister by the owner or owners of land and the local authority, for the discontinuance of the purchase of the land by the local authority, and, if the Minister is satisfied that the demolition of the buildings and the clearance of the site can be effected without the local authority acquiring the land, he may, in the case of a compulsory purchase order which has not been confirmed, authorise the authority to submit forthwith a clearance order, without prior publication or service, and he may confirm the clearance order without holding a public inquiry. Where the compulsory purchase order has been confirmed but the land has not become vested in the authority, the Minister may authorise the authority to discontinue proceedings for the purchase of the land, on their being satisfied that such covenants have been or will be entered into by all interested parties as may be necessary for securing that the buildings will be demolished and the land become subject to the like restrictions and conditions as if the authority had dealt with the land as a clearance area (*u*). A local authority are empowered to enforce the terms of any covenant entered into in accordance with the above procedure (*v*). [534]

Payments in Respect of Well-maintained Houses.—As stated previously, compensation is not payable in respect of any houses which are included in a clearance area on account of their being unfit for human habitation on account of disrepair and/or sanitary defects. Where, however, in spite of its sanitary defects, a house has been well-maintained, the Minister of Health may order the local authority to make a payment for good maintenance (*a*). The term "well-maintained" is not defined, and the Minister is the sole judge in the matter, after he has caused the house to be inspected by an officer of

(*s*) See title OVERCROWDING.

(*t*) Housing Act, 1936, Sched. IV; 29 Halsbury's Statutes 689.

(*u*) *Ibid.*, s. 31; 29 Halsbury's Statutes 589.

(*v*) *Ibid.*, s. 148; *ibid.*, 665.

(*a*) *Ibid.*, s. 42 (1); *ibid.*, 599.

the M. of H. The amount of the payment is either (1) the amount by which the aggregate expenditure incurred in maintaining the house during the five years prior to the making of the order, exceeds an amount equal to one and one-quarter times the rateable value, or (2) one and a half times, or in the case of a house occupied by the owner or a member of his family continuously during a period of three years immediately before the making of the order, three times, the rateable value of the house, whichever is the greater (b). A payment under this section may not, however, exceed the difference between the full value of the house (assuming it was not unfit for human habitation) and the site value thereof. In other words, the total sum payable in respect of a house must not exceed the market value. In case of dispute, the matter must be settled as a case of disputed compensation. In determining whether the amount of the payment is to be calculated on the rateable value or on the expenditure incurred in maintaining the house, the local authority will require the production of received accounts and other documents, so as to provide sufficient evidence to satisfy them that the amount alleged to have been spent in maintaining the house has in fact been so spent. A payment in respect of good maintenance may be made to the occupier of the house if he is also the owner thereof, or, if the house is not occupied by the owner, to the person or persons liable under any enactment, covenant or agreement to maintain and repair the house, and if more than one person is so liable the sum payable may be divided. If any other person (c) satisfies the local authority that the good maintenance is due to a material extent to work carried out at his expense, the authority may make the payment, wholly or in part, to him (d). It will be remembered that the M. of H. is not required to hold a public local inquiry where no objection is made to the confirmation of a clearance or compulsory purchase order, but in view of the provisions of sect. 42 of the Housing Act, 1936, relative to payments in respect of good maintenance, the Minister now arranges for one of his officers to examine every house in a clearance area in order to ascertain whether a payment of this kind must be made.

[535]

RE-DEVELOPMENT AREAS

Under the Housing Act, 1930 (e), a local authority were empowered to deal with an unhealthy area which was not sufficiently insanitary to warrant the demolition of all the buildings in the area, by declaring it to be an improvement area (f). The procedure for dealing with improvement areas was repealed in 1935 (g), but any local authority for an urban area can now deal with an area as a "re-development area."

Definition of Re-development Area.—A re-development area is not one in which all the houses in it are unfit for human habitation on account of disrepair and sanitary defects. Rather is it an area containing insanitary and/or overcrowded houses, badly planned and arranged, and generally in such a condition as to warrant almost

(b) Housing Act, 1936, s. 42 (2); 29 Halsbury's Statutes 599.

(c) E.g., a tenant not under express covenant to carry out repairs.

(d) Housing Act, 1936, s. 42 (3); 29 Halsbury's Statutes 599.

(e) 23 Halsbury's Statutes 396.

(f) See post, p. 330.

(g) Housing Act, 1935, s. 19; 28 Halsbury's Statutes 215.

complete replanning of the area. Such a procedure involves the demolition of buildings not sufficiently insanitary to warrant inclusion in a clearance area, and the retention of certain buildings which can remain without seriously affecting the replanning of the area as a whole. In short, therefore, a re-development area is one which is seriously congested, overcrowded and insanitary, situated in the central area of a large urban district, where it is desirable that the area should be replanned as a whole, and a substantial portion used for rehousing purposes. [536]

Conditions Governing Declaration of a Proposed Re-development Area.—Before any urban authority (*h*) may define a proposed re-development area, they must be satisfied that :

- (1) the area contains fifty or more working class houses ; and
- (2) at least one-third of the working class houses are :
 - (i.) overcrowded ; or
 - (ii.) unfit for human habitation and not capable at a reasonable expense of being rendered so fit ; or
 - (iii.) so arranged as to be congested ; and
- (3) the industrial and social conditions of their district are such that the area should be used to a substantial extent for housing the working classes ; and
- (4) it is expedient in connection with the provision of housing accommodation for the working classes that the area should be re-developed as a whole (*h*).

It will be seen that the area must contain a minimum of fifty working class houses, but the term "working class" is not defined for the purposes of these provisions. As to overcrowding, see title OVERCROWDING, Vol. X., p. 88. The unfit houses must be incapable of being rendered fit at a reasonable expense, but, again, the term "reasonable expense" is not defined. In this connection it should be remembered that under Part I. of the Housing Act, 1936, relating to individual insanitary houses, in determining whether a house can be rendered fit for human habitation at a reasonable expense, regard must be had to the estimated cost of the works necessary to render it so fit and the value which it is estimated that the house will have when the works are completed (*i*). The word "congested" is not defined but it probably relates to the planning and arrangement of the streets and rows of houses, and it would seem to refer to houses which could properly be included in a clearance area on the ground that by reason of their bad arrangement or the narrowness or bad arrangement of the streets, they are dangerous or injurious to the health of the inhabitants of the area (*k*).

The area must contain *at least one-third* overcrowded, unfit or congested working class houses. Although the section is not perfectly clear, it would seem that the proportion of "one-third" is obtained by comparing the total of the houses coming within the above three categories with the total number of working-class houses in the area.

It is unfortunate that the section does not prescribe more precisely the extent of the proposed re-development area which must be used

(*h*) Housing Act, 1936, s. 34 (1) ; 29 Halsbury's Statutes 591. City of London ; rest of the administrative county of London ; county boroughs ; non-county boroughs ; and urban districts.

(*i*) Housing Act, 1936, s. 9 (3) ; 29 Halsbury's Statutes 572.

(*k*) *Ibid.*, s. 25 (1) ; *ibid.*, 584.

for rehousing purposes. The word "substantial" would seem to indicate that a good proportion of the site must be used for this purpose, and it is submitted that in no case should this be less than 50 per cent., and in many cases it would be a good deal more. The Minister of Health must be satisfied on this point, and it might be that the Minister's approval would be withheld if the local authority proposed to build an insufficient number of new working class houses on the cleared site.

[587]

Procedure Leading to the Declaration of a Proposed Re-development Area.—An urban authority become aware of the existence of a proposed re-development area either as a result of an inspection of their district carried out in accordance with the provisions of sect. 57 of the Housing Act, 1936 (*l*), or "otherwise" (*m*). Apart from the information relating to overcrowding, which will be available as a result of an inspection carried out in accordance with sect. 57, the main details required for the consideration of a proposed re-development area will be furnished by the housing inspections carried out in accordance with sect. 5 of the Housing Act, 1936 (*n*), and the Consolidated Housing Regulations, 1925 (*o*) and 1932 (*p*).

A report upon a proposed re-development area need not take the form of an official representation (*q*), but it is desirable that a report should be submitted to the local authority, either by the M.O.H. and/or the sanitary inspector. In addition it may be necessary for the planning officer to report upon the existing layout of the area, and the latter officer will, of course, be concerned at a later date with the preparation of the re-development plan (*r*). Whatever method or form of report is adopted, full details must be given on the following points :

- (1) number of working-class houses ;
- (2) number and type of other buildings (if any) ;
- (3) number of working-class houses :
 - (i.) overcrowded ; or
 - (ii.) unfit and incapable of repair at reasonable expense ; or
 - (iii.) congested ;
- (4) proportion of site to be utilised for housing of the working classes ; and
- (5) preliminary proposals for re-development of site. 【588】

Declaration of Proposed Re-development Area.—If an urban authority are satisfied that the prescribed conditions exist, they must declare the area concerned to be a proposed re-development area, pass an appropriate resolution, and define the area on a map (*s*), but the map need not distinguish the houses according to their condition—overcrowded, unfit or congested—as, in the event of the re-development plan being approved, the detailed condition of each house will come up for consideration at a later stage when the urban authority proceed to

(*l*) 29 Halsbury's Statutes 609 ; and see title OVERCROWDING.

(*m*) Housing Act, 1936, s. 34 (1) ; 29 Halsbury's Statutes 591.

(*n*) 29 Halsbury's Statutes 568.

(*o*) S.R. & O., 1925, No. 866.

(*p*) S.R. & O., 1932, No. 648 ; and see title INSANITARY HOUSES.

(*q*) See *ante*, p. 307.

(*r*) See *post*, p. 321.

(*s*) Housing Act, 1936, s. 34 (1) ; 29 Halsbury's Statutes 591.

acquire the houses in the area by means of compulsory purchase orders (*t*). The map should be on a scale of not less than 1/2,500 (*u*). [539]

Procedure after Declaration of Proposed Re-development Area.—After passing a resolution declaring an area to be a proposed re-development area, the urban authority must send a copy of the resolution and of the map, to the M. of H., and must publish in one or more newspapers circulating in their district a notice (*a*) stating that the resolution has been passed and naming a place within their district where a copy of the resolution and of the map may be inspected. The Minister should be furnished with copies of the newspapers containing the notice relating to the resolution (*b*).

It should be noted that there is no formal confirmation or approval by the M. of H. of the resolution of the urban authority declaring an area to be a proposed re-development area, and no objection may be lodged by any persons against such declaration. The Minister's approval relates to the re-development plan (*c*), in regard to which interested parties may lodge an appeal (*d*). [540]

RE-DEVELOPMENT PLAN

Where an urban authority have passed a resolution in accordance with sect. 34, Housing Act, 1936 (*e*), declaring an area to be a proposed re-development area, they must, within a period of six months or such extended period as the M. of H. may allow (*f*), submit to the Minister a re-development plan, indicating the manner in which it is intended that the area should be laid out and the land therein used, whether for existing purposes or for purposes requiring the carrying out of re-development, and in particular the land intended to be used for the provision of houses for the working classes, for streets and for open spaces (*g*). Regard must be paid to the provisions of any planning scheme (*h*) or any proposed planning scheme in so far as such a scheme may relate to the re-development area (*i*). Before the re-development plan is submitted to the Minister, the urban authority must publish in one or more local newspapers circulating in their district a notice in the prescribed form (*k*), and serve a similar notice on every owner, lessee, and occupier (except tenants for a month or less) of the land in the defined area, and also on all statutory undertakers owning apparatus in the area, stating that the plan has been prepared and is about to be submitted to the Minister, naming a place within their district where the

(*t*) See *post*, p. 323.

(*u*) Memorandum C., M. of H., October, 1935, para. 5.

(*a*) Not prescribed.

(*b*) Memorandum C., M. of H., October, 1935, para. 5.

(*c*) See *post*, p. 322.

(*d*) See *post*, p. 322.

(*e*) 29 Halsbury's Statutes 591; and see *ante*, p. 320.

(*f*) If an extension of time is desired, application should be made to the M. of H. at least one month prior to the expiration of the statutory period, setting out the reasons for the extension—Memorandum C., M. of H., October, 1935, para. 6.

(*g*) Housing Act, 1936, s. 35 (1); 29 Halsbury's Statutes 592.

(*h*) "Planning scheme" means a scheme made under the Town Planning Act, 1925, or the Town and Country Planning Act, 1932, or any enactment repealed by either of those Acts; Housing Act, 1936, s. 188; 29 Halsbury's Statutes 682.

(*i*) Housing Act, 1936, s. 35 (2); 29 Halsbury's Statutes 592.

(*k*) Housing Act (Form of Orders and Notices) Regulations, 1937; S.R. & O., 1937, No. 78, Form 42.

plan may be inspected, and specifying the time, and the manner in which, objections can be made (*l*).

The re-development plan should be prepared by the Housing and Planning Committees acting in co-operation, and the instructions contained in Memorandum T. & C.P. 5, relating to the preparation of planning maps, should be followed (*m*). The Minister should be furnished with :

- (1) copies of newspapers containing the advertisement and of notices ;
- (2) certificate of service of notices ;
- (3) certified copy of the re-development plan ; and
- (4) a formal resolution of the authority applying for approval of the plan (*n*).

The Minister of Health is entitled to advise urban authorities in regard to the preparation of re-development plans up to the time objections are made by any of the owners (*o*), but after the receipt of any such objections, the Minister acts in a judicial capacity and must not hear or advise one of the parties in the absence of the other (*p*). In the absence of any objections, it would seem possible for the Minister to continue to advise urban authorities regarding future procedure respecting the re-development plan. [541]

Approval of Re-development Plan.—The M. of H. is entitled to approve, with or without modification, a re-development plan, provided that if any person upon whom a notice (*q*) has been served, objects to the approval of the plan, a public local inquiry must be held (*r*). The Minister may exclude land from the area, but he is not entitled to add land to it (*s*). [542]

Publication of Minister's Approval of Re-development Plan.—Upon receipt of the Minister's approval of the re-development plan, the urban authority must publish notice in the prescribed form (*t*) in one or more newspapers and serve a similar notice on every person who, having given notice to the Minister of his objection to the plan, appeared at the public local inquiry in support of his objection (*u*). [543]

Modification of Re-development Plan.—An urban authority may modify a re-development plan where they subsequently find it desirable to do so, but they must prepare a new plan of that portion of the re-development area affected by the modification, which must be advertised in a similar manner to the original plan and is subject to the same rules with regard to approval by the Minister of Health and objections by interested parties (*a*). [544]

(*l*) Housing Act, 1936, s. 35 (3) ; 29 Halsbury's Statutes 592 ; and see *post*, p. 328, as to objections.

(*m*) Issued in February, 1935, by the M. of H., from which copies can be obtained on application.

(*n*) Memorandum C, M. of H., October, 1935, para. 6.

(*o*) *Frost v. M. of H.*, [1935] 1 K. B. 286 ; 99 J. P. 87 ; Digest (Supp.) ; *Offer v. M. of H.*, [1936] 1 K. B. 40 ; 99 J. P. 347 ; Digest (Supp.).

(*p*) *Errington v. M. of H.*, [1935] 1 K. B. 249 ; 99 J. P. 15 ; Digest (Supp.).

(*q*) See *ante*, p. 321.

(*r*) As to appeals and public inquiries, see *post*, p. 328.

(*s*) Housing Act, 1936, s. 35 (4) ; 29 Halsbury's Statutes 592.

(*t*) S.R. & O., 1937, No. 78, Form 43.

(*u*) Housing Act, 1936, s. 35 (5) ; 29 Halsbury's Statutes 593.

(*a*) *Ibid.*, s. 35 (6) ; *ibid.*

Validity and Date of Operation of Minister of Health's Approval of Re-development Plan.—The provisions of the Second Schedule to the Housing Act, 1936 (b), have effect with respect to the validity and date of operation of the Minister's approval of a re-development plan or of a new plan (c). After the Minister has given his decision regarding the plan, it becomes operative six weeks after the date of publication of such approval, and during that period any person aggrieved by the plan may appeal to the High Court but only on the ground that it is not within the powers of the Act, or that any requirement of the Act has not been complied with (d). [545]

Purchase of Land for Purposes of Re-development.—After a re-development plan has been approved, the urban authority must proceed to secure the re-development of the area, and for that purpose they are empowered to purchase by agreement, or by means of compulsory purchase orders, subject in each case to the approval of the M. of H., land in the re-development area or land outside the area which may be required for rehousing purposes. Where the land in the re-development area is required for the provision of houses for the working classes, steps for its acquisition must be taken within a period of six months from the date when the Minister's approval of the re-development plan becomes operative, and within two years from that date in the case of other land in the area (e). An urban authority are not, however, empowered to purchase compulsorily land which is the property of a local authority or of any statutory undertakers which has been acquired by them for the purposes of their undertaking (f). [546]

Compulsory Purchase Orders.—Orders for the compulsory purchase of land in connection with a re-development area are subject to the provisions of the First Schedule to the Housing Act, 1936 (g). In addition to the service of notice of the making of the compulsory purchase order on the owners, lessees and certain occupiers of land in the re-development area, notice must be served upon every mortgagee of any house in the area which has been classified as being unfit for human habitation and not capable at a reasonable expense of being rendered so fit (h).

The form of compulsory purchase order has been prescribed (i) and also the forms advertising the order (k). When land is outside the re-development area, special forms have been prescribed (l).

The plan accompanying the compulsory purchase order must show :

- (1) the lands in the area which the urban authority are authorised to purchase compulsorily, and described in the first schedule to the compulsory purchase order, such lands being delineated by brown edging on the map ;

(b) 29 Halsbury's Statutes 687.

(c) Housing Act, 1936, s. 35 (7); 29 Halsbury's Statutes 593.

(d) *Ibid.*, Sched. II.; 29 Halsbury's Statutes 687.

(e) *Ibid.*, s. 36; *ibid.*, 593.

(f) *Ibid.*, s. 36 (5); *ibid.*

(g) 29 Halsbury's Statutes 684; and as to compulsory purchase orders generally, see *ante*, p. 312.

(h) Housing Act, 1936, Sched. I., para. 13; 29 Halsbury's Statutes 687.

(i) S.R. & O., 1937, No. 78, Form 44.

(k) *Ibid.*, Forms 45 and 46.

(l) *Ibid.*, Forms 48, 49 and 50.

- (2) the lands purchased for the provision of houses for the working classes, shown hatched yellow; and
- (3) the houses which are unfit for human habitation and not capable at reasonable expense of being rendered so fit, coloured pink, and specified in the second schedule to the order.

Confirmation of Compulsory Purchase Orders.—Where an interested person objects to the confirmation of a compulsory purchase order on any of the grounds specified in para. 5 of the First Schedule to the Housing Act, 1936 (*m*), the Minister of Health must hold a public local inquiry and consider any such objection. The Minister may confirm the order, with or without modification, and in the event of no appeal being made he may do so without holding a public inquiry (*m*). Notice of confirmation of a compulsory purchase order must be advertised in the local newspapers and a copy of such notice served on the objectors who attended at the public inquiry (*n*). The form of advertisement and personal notice has been prescribed (*o*); a special form is prescribed in connection with the purchase of land outside the re-development area (*p*).

Validity and Date of Operation of Compulsory Purchase Orders.—The provisions of the Second Schedule to the Housing Act, 1936 (*n*), have effect with respect to the validity and date of operation of compulsory purchase orders made under sect. 36, Housing Act, 1936 (*q*). [547]

Use of Land Purchased in a Re-development Area.—Where land in a re-development area is purchased for the provision of houses for the working classes, it is deemed to have been acquired under Part V. of the Housing Act, 1936 (*r*). Land which is not purchased for housing purposes may, with the consent of the Minister of Health, be sold or leased to any person, or exchanged for other land which the local authority have power to acquire with or without paying or receiving money for equality of exchange. If, however, the land is in the re-development area, conditions must be imposed so as to secure that it must be re-developed or used in accordance with the re-development plan (*s*). [548]

Compensation for Land Acquired Compulsorily.—The compensation payable in respect of land in a re-development area which is acquired compulsorily, is governed by the provisions of sect. 40 of the Housing Act, 1936 (*t*). This section provides that the compensation to be paid in respect of houses which are unfit for human habitation and incapable at a reasonable expense of being rendered so fit, shall be on the basis of site value (in a similar manner to land included in a clearance area). In every other case, full market value must be paid, but in assessing compensation the arbitrator may take into account and embody in his award any undertaking given by the local authority with respect to the time within which, and the manner in which, the re-development or any part thereof is to be carried out, and the terms of any undertaking

(*m*) 29 Halsbury's Statutes 686; and see *post*, p. 329.

(*n*) Housing Act, 1936, Sched. II.; 29 Halsbury's Statutes 687.

(*o*) S.R. & O., 1937, No. 78, Form 47.

(*p*) *Ibid.*, Form 51.

(*q*) 29 Halsbury's Statutes 598; and see *ante*, p. 323.

(*r*) Housing Act, 1936, s. 36 (6); 29 Halsbury's Statutes 594.

(*s*) *Ibid.*, s. 36 (7); *ibid.*

(*t*) 29 Halsbury's Statutes 598; and see *ante*, p. 316.

so embodied in the award are binding on and enforceable against the authority (u). [549]

Re-development by Owners.—Any persons proposing to undertake the re-development of land may submit details of such proposals to the local authority and such authority must consider them. If the authority are satisfied with such proposals they must give notice to that effect to the persons submitting them, indicating the times within which the several parts of the re-development are to be carried out. So long as the re-development proceeds in accordance with the time limits specified, the local authority cannot take action in respect of the land concerned under the provisions of Parts II. and III. of the Housing Act, 1936 (a). The foregoing provisions do not apply in the case of premises subject to a confirmed clearance or compulsory purchase order, or in the case of premises subject to a demolition order, or comprised in an approved re-development area (b). Where the local authority are satisfied that in order to carry out a re-development scheme approved in accordance with the above procedure it is necessary that any controlled dwelling-house should be vacated and that suitable alternative accommodation (c) is available for the tenant, the authority may issue to the landlord a certificate, in the prescribed form (d), that such alternative accommodation is or will be available, and the landlord is entitled to obtain possession of the controlled house (e). The local authority are not bound to accept proposals for re-development submitted by owners and there is no right of appeal against their refusal to do so, but it should be remembered that if and when the authority bring forward proposals for re-development, objections may be forwarded to the Minister of Health who is then bound to hold a public inquiry.

An owner of a house is entitled to submit a list of works of improvement (otherwise than by way of decoration or repair) or structural alteration, which he is prepared to carry out with the object of making the house in all respects fit for human habitation. The authority must consider the list submitted by the owner and if in their opinion additional work is necessary to render the house fit, they must supply to the owner a list of such additional work. Where the local authority are satisfied that the work proposed by the owner, together with any additional work specified by them, has been carried out satisfactorily, they must, upon application by the owner and payment of a fee of one shilling, issue a certificate (f), stating that the house is fit for human habitation and will with reasonable care and maintenance remain so fit for a period specified in the notice, of not less than five, or more than ten, years. During the operation of such a certificate, action may not be taken by the local authority relating to clearance or improvement areas or under sects. 11 or 12 of the Housing Act, 1936 (g), relating to demolition and closing orders (h). If the local authority are not

(u) Housing Act, 1936, Sched. IV.; 29 Halsbury's Statutes 689.

(a) *Ibid.*, s. 50 (1); *ibid.*, 604.

(b) *Ibid.*, s. 52 (1); *ibid.*, 606.

(c) Defined in *ibid.*, s. 68; *ibid.*, 615.

(d) Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937, S.R. & O., 1937, No. 80, Form H.

(e) Housing Act, 1936, s. 50 (2); 29 Halsbury's Statutes 604.

(f) Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937, S.R. & O., 1937, No. 80, Form I.; 29 Halsbury's Statutes 724.

(g) 29 Halsbury's Statutes 574, 575; and see title INSANITARY HOUSES.

(h) Housing Act, 1936, s. 51; 29 Halsbury's Statutes 605.

satisfied that the house will be rendered fit as a result of the execution of the works proposed by the owner, together with additional works (if any), no further action can be taken and there is no right of appeal against the decision of the authority. The owner has, however, a right of appeal at a later stage when action is taken by the local authority with a view to the demolition of the house. It should be noted that the issue of a certificate under sect. 51 of the Housing Act, 1936, does not exempt a house from the service of a repair notice under sect. 9 of that Act (i).

Instead of considering proposals submitted by an owner with respect to the re-development of land (sect. 50, Housing Act, 1936) or the improvement of houses (sect. 51, Housing Act, 1936), in relation to premises subject to an unconfirmed or unapproved clearance or compulsory purchase order, or re-development plan, the authority may transmit the proposals to the Minister of Health, who must treat them as objections to the clearance or compulsory purchase order, or re-development plan (k). [550]

APPEALS

An owner of land or property affected by a clearance or compulsory purchase order, or a re-development plan may appeal :

- (1) to the Minister of Health, against the inclusion of his property in a clearance area (l) ;
- (2) to the Minister of Health, against the inclusion of his property in a compulsory purchase order, in the "pink" portion, that is with compensation on the basis of site value only (m) ;
- (3) to the High Court against the confirmation of a clearance or compulsory purchase order by the Minister, only on the ground that the order is not within the powers of the Housing Act, or that some requirement of the Act has not been complied with (n) ; or
- (4) to the Minister of Health, in respect of a re-development area (o). [551]

Appeals against Confirmation of Clearance or Compulsory Purchase Orders.—Appeals against clearance or compulsory purchase orders should be addressed to the M. of H., and should be made within the period specified (not less than fourteen days) in the notice served on the owners, etc., by the local authority. The appeal should be in writing and should state the grounds of appeal. If notice of appeal is received by the Minister he must hold a public local inquiry (l), but he may not hold such an inquiry until the expiration of fourteen days from the service by the local authority upon each objector of a statement setting out their principal grounds for being satisfied that the buildings are unfit for human habitation (p). It should be noted that the authority are only bound to supply a statement setting out the principal grounds for including the property in the clearance area and not a detailed report thereon (q). The statement should therefore be in a

(i) 29 Halsbury's Statutes 572 ; and see title INSANITARY HOUSES.

(k) Housing Act, 1936, s. 52 (2) ; 29 Halsbury's Statutes 606.

(l) *Ibid.*, Sched. III. ; *ibid.*, 688.

(m) *Ibid.*, Sched. I. ; *ibid.*, 684.

(n) *Ibid.*, Sched. II. ; *ibid.*, 687.

(o) *Ibid.*, s. 35 (4) ; *ibid.*, 592.

(p) *Ibid.*, s. 41 (1) ; *ibid.*, 598.

(q) See *R. v. M. of H. ; ex parte Hack* (1937), 3 All E. R. 176 ; Digest (Supp.).

summarised form indicating the principal items of disrepair and sanitary defects which render the house unfit for human habitation, in sufficient detail to enable an owner to submit proposals for remedying the defects.

For the purposes of the execution of his powers and duties under the Housing Act, 1936, the M. of H. is empowered to hold such public local inquiries as he may think fit (*r*). The provisions of sect. 290, L.G.A., 1933 (*s*), relating to public inquiries, apply to inquiries under the Housing Act. See also title INQUIRIES.

The procedure at a public local inquiry is of considerable importance and involves the officials concerned in a great deal of detailed work and not a little anxiety. A Ministerial inquiry is not a court of law, and it is not the usual practice to put witnesses on oath, although the inspector conducting the inquiry may take evidence on oath if he thinks it desirable to do so (*t*). The proceedings at a public inquiry open with the person representing the local authority reading the notice of the inquiry, followed by a general statement of the steps taken by them leading to the submission of the order to the M. of H. for confirmation, including the compliance by the authority of all the necessary legal formalities regarding clearance areas. At this stage, objections may be raised that some legal formality has not been correctly followed. The inspector holding the inquiry never expresses an opinion on legal objections of this kind at the inquiry but simply records details of the objections and promises to bring them to the notice of the Minister. The case for the local authority having been opened, evidence is then called in support of the making and confirmation of the order. Such evidence is usually given by the M.O.H. and chief sanitary inspector, the former confining his evidence to a general statement covering the area as a whole, emphasising its bad arrangements, overcrowding of the site, absence of adequate lighting and ventilation, and the general condition of the premises in the area viewed as a whole. The chief sanitary inspector follows with detailed evidence as to the disrepair and sanitary defects existing at each individual house. This division of responsibility as regards the submission of evidence works admirably in practice and relieves the M.O.H. of much detailed evidence which it would be difficult for him to submit, unless he devoted a considerable amount of time to a close inspection of each house in the area—a duty normally within the province of the sanitary inspector. As a general rule, it is inadvisable to give details of the vital statistics, unless the area is a large one, as such information is usually quite misleading, and the local authority should always be in a position to prove their case without resort to such data. At the conclusion of the evidence of each of the witnesses, cross-examination takes place in the usual way. After the case for the local authority has been concluded, for the area as a whole in the case of small areas, or for each block of houses in the case of the larger areas, the case for the appellants is conducted in much the same way. The owners, through their solicitors or counsel, or otherwise, submit their case, with or without expert witnesses, followed by cross-examination by the representative of the authority. Finally, it is usually submitted by or on behalf of the objecting owners, that the Minister should not confirm

(*r*) Housing Act, 1936, s. 178; 29 Halsbury's Statutes 677.

(*s*) 26 Halsbury's Statutes 459.

(*t*) L.G.A., 1933, s. 290 (2); 26 Halsbury's Statutes 459.

the order in so far as their property is concerned, or confirm it with appropriate modifications. After the formal inquiry has concluded the inspector *always* inspects each house in the clearance area before preparing his report for submission to the Minister. Much of the time at the formal inquiry could be saved if it was realised by owners that this personal inspection is always carried out. Representatives of the owners and of the local authority, are entitled to accompany the inspector on the occasion of his visit to the property, but as a general rule it is not desirable to have a discussion on the site. The sanitary inspector, whose duty it is to accompany the inspector, should be prepared to point out any particular matter and if necessary to counter the objections of the owners in cases where it is suggested that items of disrepair or sanitary defects do not exist. Subsequently, the inspector prepares a detailed report for the consideration of the Minister, but such report is confidential and not available either for the local authority or objecting owners. The Minister is required, however, to supply to an owner who objected to the confirmation of the order and appeared in support of his objection at the public inquiry, a written statement setting out the reasons why the Minister decided that the building concerned was unfit for human habitation (u). [552]

Appeals in Respect of Re-development Areas.—After the declaration of a proposed re-development area (a), a local authority must submit to the M. of H., within a period of six months, a re-development plan. Owners, or other interested persons, may appeal against the approval of the plan (b). There is no prescribed form of appeal, but it must be in writing and addressed to the M. of H., and must state the grounds of objection. The appeal must be received by the Minister within forty-two days from the date of publication and service of the notice by the local authority of the preparation of the re-development plan (c).

A public local inquiry regarding a re-development plan would seem to be confined to the area as a whole and not a detailed consideration of the structural condition of individual houses, which may be the subject of a further inquiry when the local authority make an order for compulsory purchase (d). The main grounds of objection likely to be met with in connection with a re-development plan include : (1) the conditions in the area do not warrant its re-development ; (2) the proposed re-development, as indicated on the plan, is not satisfactory and should be modified or amended ; (3) the requirements of the Act, which entitled a local authority to declare an area to be a proposed re-development area (e), have not been complied with ; (4) the property belonging to the objector ought not to have been included in the area ; and (5) the local authority ought to have dealt with the conditions in the area by other means. At the public inquiry, the local authority must submit evidence to satisfy the Minister that the necessary legal formalities have been correctly observed ; that the conditions laid down in the Act have been satisfied ; that the re-development of the area as a whole is justified ; and that the social and industrial conditions

(u) Housing Act, 1936, s. 41 (2) ; 29 Halsbury's Statutes 598.

(a) See *ante*, p. 320.

(b) Housing Act, 1936, s. 35 (4) ; 29 Halsbury's Statutes 592.

(c) S.R. & O., 1937, No. 78 ; Form 42.

(d) See *post*, p. 329.

(e) See *ante*, p. 319.

of the district are such as to warrant the use of the area to a substantial extent for housing persons of the working classes.

After a re-development plan has been approved by the M. of H., the local authority may make orders for the compulsory purchase of any land within or adjoining the area, and submit them to the Minister for confirmation (f). The provisions of the First Schedule to the Housing Act, 1936 (g), apply in regard to compulsory purchase orders made under sect. 36, *supra*, and the procedure in respect of appeals to, and public inquiries by, the Minister is similar to that detailed previously (h). It should be noted, however, that the local authority must indicate on the compulsory purchase order any land which comprises or consists of a house which in their opinion is unfit for human habitation and not capable at a reasonable expense of being rendered so fit (i). Where the Minister confirms a compulsory purchase order in respect of houses which are incapable of being rendered fit for human habitation at a reasonable expense, the compensation to be paid by the local authority is based on site value only (k). It is necessary, therefore, at a public inquiry respecting a compulsory purchase order of this kind, to submit evidence on behalf of the local authority indicating, in respect of each unfit house incapable of repair at reasonable expense, a schedule of items of disrepair and sanitary defects which render the house unfit for human habitation ; the estimated cost of rendering the house fit ; and the valuation of the house upon completion of the repairs. It must be remembered that before the Minister of Health may hold a local inquiry regarding a compulsory purchase order, a period of fourteen days must elapse after the service by the local authority upon each objector of a statement setting out the authority's principal grounds for being satisfied that the houses are unfit for human habitation (l). An appeal may also be made against the confirmation of a compulsory purchase order in the case of land in the re-development area, where the objector is prepared to enter into arrangement for the carrying out of re-development, or for securing the use of the land in accordance with the re-development plan (m). An appeal may also be lodged in the case of land outside the re-development area, but only in respect of any matter not being one which can be determined by the arbitrator by whom the compensation is to be assessed (n). [553]

Appeals to the High Court against the Decision of the Minister of Health.—Appeals to the High Court against the decision of the Minister to confirm a clearance or compulsory purchase order or his approval of a re-development plan, must be made within six weeks from the date of publication of the notice of confirmation or approval. The court may, by interim order, suspend the operation of the order, or the approval of the plan, either generally or in so far as it affects any property of the applicant until the final determination of the proceedings. Upon the hearing of the application, the court may, if satisfied that the order, or the approval of the plan, is not within the powers of the Housing Act

(f) Housing Act, 1936, s. 36 ; 29 Halsbury's Statutes 593.

(g) 29 Halsbury's Statutes 684.

(h) See *ante*, p. 326.

(i) Housing Act, 1936, s. 36 (3) ; 29 Halsbury's Statutes 594.

(k) *Ibid.*, s. 40 (3) ; *ibid.*, 598.

(l) See *ante*, p. 326.

(m) See *ante*, p. 325.

(n) Housing Act, 1936, Sched. I., para. 5 ; 29 Halsbury's Statutes 686.

or that the interests of the applicant have been substantially prejudiced by any requirement of the Act not having been complied with, quash the order, or the approval of the plan, either generally or in respect of any particular property (o). Subject to the right of appeal detailed above, the validity of the order or the approval of the plan, cannot be questioned by prohibition or *cetiorari* or in any legal proceedings whatsoever, either before or after the order is confirmed, or the plan approved, as the case may be (p). [554]

IMPROVEMENT AREAS

The power of dealing with an insanitary area as an "improvement area"—introduced in the Housing Act, 1930 (q)—was repealed in 1935 (r), and the procedure now only applies to improvement areas declared as such prior to the passage of the Act of 1935 (s). Subsequent to that date, areas unsuitable for treatment as clearance areas, may be dealt with as re-development areas (t).

An improvement area has been described as an "aggregation of houses in varying degree of bad condition, more or less badly arranged and generally seriously overcrowded" (u). The essential difference between an improvement area and a clearance area, is that in the former all the buildings need not be demolished. The procedure to be followed in dealing with the conditions in an improvement area include: (1) the repair of the insanitary houses (a); (2) the demolition of insanitary houses incapable of repair at reasonable expense (b); (3) demolition of houses and buildings by owners for the purpose of opening up the area, without the purchase of the land by the local authority; and (4) the purchase of land by the local authority for the opening up of the area (c).

Much of the procedure relating to the representation, declaration, and treatment of improvement areas, is similar to that for clearance areas. The repair and demolition of insanitary houses is carried out in accordance with the provisions of Part II. of the Housing Act, 1936 (d), as to which see title INSANITARY HOUSES, Vol. VII., p. 274.

Where it is found necessary for a local authority to purchase land in an improvement area, a compulsory purchase order, in the prescribed form (e), may be made and submitted to the Minister of Health and confirmed by him in accordance with the First Schedule to the Housing Act, 1936 (f). Notice of the making of the compulsory purchase order in the prescribed form (g) must be advertised in the local press and served upon owners, mortgagees, lessees and occupiers. Where a compulsory purchase order so made, has been confirmed, notice of

(o) Housing Act, 1936, Sched. II.; 29 Halsbury's Statutes 687.

(p) *Ibid.*

(q) S. 7; 29 Halsbury's Statutes 570.

(r) Housing Act, 1935, s. 19; *ibid.*, 581.

(s) August 2, 1935.

(t) See *ante*, pp. 318 *et seq.*

(u) Circular 1138, M. of H., August 19, 1930, para. 4.

(a) See Housing Act, 1936, s. 9; 29 Halsbury's Statutes 572.

(b) See *ibid.*, s. 11; *ibid.*, 574.

(c) *ibid.*, s. 38 (1); *ibid.*, 596.

(d) 29 Halsbury's Statutes 331.

(e) S.R. & O., 1937, No. 78, Form 34.

(f) Housing Act, 1936, s. 38 (2); 29 Halsbury's Statutes 596.

(g) S.R. & O., 1937, No. 78, Forms 35 and 36.

confirmation, in the prescribed form (*h*), must be advertised and served upon the objectors attending the public inquiry.

When the procedure for dealing with improvement areas was first introduced in 1930, a local authority were required to make bye-laws under sect. 8 (1) (iii.) of the Housing Act, 1930 (*i*), and sects. 6 and 7 of the Housing Act, 1925 (*k*), for preventing and abating overcrowding, and generally for improving the housing conditions in the area. The Housing Act, 1935 (*l*), repealed the above provisions, as overcrowding is now dealt with in all districts under Part IV. of the Housing Act, 1936 (*m*). Sect. 6 of the Act of 1936 (*n*), empowers a local authority to make bye-laws with respect to houses which are occupied, or are of a type suitable for occupation, by persons of the working classes, irrespective of their being in an improvement area or not. Where a local authority had declared an area to be an improvement area at the time of the passing of the Housing Act, 1935 (*o*), but had not made bye-laws under sect. 8 (1) (iii.) of the Act of 1930, *supra*, their obligation to do so ceased (*p*). Where such bye-laws had been made at the above date, they remained in operation until the "appointed day" in relation to the general overcrowding provisions (*q*). As the M. of H. has now fixed the appointed day (*r*), the position now is that in those districts where improvement area bye-laws have been adopted, only those portions relating to sanitary conditions and amenities, remain in force in relation to houses in such areas. [555]

REHOUSING

Obligations of Local Authorities.—Where a local authority have passed a resolution declaring an area to be a clearance or improvement area, they must, before taking any action which will necessitate the displacement of persons of the working classes, undertake to carry out or secure the carrying out of such rehousing operations, if any, within such period as the M. of H. may consider to be reasonably necessary. In the case of a re-development area, rehousing accommodation must be provided in all cases where suitable accommodation is not available for persons of the working classes who will be displaced as a result of the re-development plan (*s*). A local authority are not bound to provide alternative accommodation for the purpose of carrying on any business (*t*). [556]

Provisions of Housing Accommodation.—Local authorities are empowered to provide housing accommodation, either within or without their district, by the erection of new houses, the conversion of buildings into houses, the acquisition of houses suitable for the purpose, and by altering, enlarging, repairing, or improving any houses or buildings

(*h*) S.R. & O., 1937, No. 78 ; Form 37.

(*i*) 23 Halsbury's Statutes 430.

(*k*) 13 Halsbury's Statutes 1005, 1006.

(*l*) S. 19 ; 28 Halsbury's Statutes 215.

(*m*) 29 Halsbury's Statutes 609 ; and see title OVERCROWDING.

(*n*) 29 Halsbury's Statutes 568.

(*o*) August 2, 1935.

(*p*) Housing Act, 1935, s. 19 (2) ; 28 Halsbury's Statutes 215.

(*q*) *Ibid.*, s. 99, Sched. VII. ; *ibid.*, 259, 273.

(*r*) For most areas, January 1, 1937 ; Housing Act, 1935 (Operation of Over-crowding Provisions) Order, 1936, S.R. & O., 1936, No. 665.

(*s*) Housing Act, 1936, s. 45 ; 29 Halsbury's Statutes 601.

(*t*) *Re Gateshead County Borough (Barn Close) Clearance Order, 1931*, [1933]

1 K. B. 429 ; 97 J. P. 1 ; Digest (Supp.).

which have been acquired by them (*u*). Local authorities are also empowered to acquire land required for housing purposes, either by agreement, appropriation or compulsorily (*a*). As to the acquisition of land, see title **HOUSING**, Vol. VII., p. 63. [557]

Standard of Rehousing Accommodation.—The M. of H. must not approve of the proposals of a local authority with respect to rehousing accommodation, unless he is satisfied that owing to special circumstances some other standard of size or accommodation should be adopted, otherwise than in the form of two-storied houses with a minimum of six hundred and twenty and a maximum of nine hundred and fifty superficial feet, or structurally separate and self-contained flats or one-storied houses with a minimum of five hundred and fifty and a maximum of eight hundred and eighty superficial feet. A house containing two bedrooms must be treated as providing accommodation for four persons, three bedrooms five persons, and four bedrooms seven persons (*b*). It should be noted that the rehousing accommodation to be provided by a local authority relates to a "number" of persons to be displaced and not to individual families and persons, with the result that the actual persons displaced may not all be rehoused by the local authority, and the authority are not bound to rehouse a displaced family on the estate built expressly for any particular clearance area, or, in fact, to offer them accommodation at all. [558]

Allowances Towards Cost of Removal.—A local authority may pay the expenses of removal of persons from premises to which a clearance or compulsory purchase order applies, or as being unfit for human habitation and not capable at reasonable expense of being rendered so fit (*i.e.* in a re-development area) (*c*). As a general rule, local authorities undertake the work of removal themselves, and combine with it a system of disinfection of furniture and bedding, with a view to the eradication of vermin. [559]

Rehousing by Housing Associations.—Arrangements may be made between a local authority and a housing association, whereby the association undertakes to provide any necessary rehousing accommodation, the local authority paying to the association the amount of any Exchequer contributions received by them, together with the appropriate contribution from the local rates (*d*). As to housing associations, see title **HOUSING ASSOCIATIONS**. [560]

Exchequer Contributions.—Exchequer contributions are payable in respect of rehousing accommodation provided by a local authority, with the approval of the Minister of Health, for the housing of persons displaced as a result of the operation of a clearance or compulsory purchase order, or a re-development plan. The subsidy is now calculated on the basis of £5 10*s.* per new house per annum for forty years, and a contribution of £2 15*s.* per house must also be contributed from the local rate fund (*e*). As to subsidies, see title **HOUSING SUBSIDIES**. [561]

(*u*) *Housing Act, 1936, s. 72 ; 29 Halsbury's Statutes 619.*

(*a*) *Ibid.*, ss. 73—76 ; *ibid.*, 620—622.

(*b*) *Ibid.*, s. 136 ; *ibid.*, 659.

(*c*) *Ibid.*, s. 44 ; *ibid.*, 600.

(*d*) *Ibid.*, s. 94 ; *ibid.*, 636 ; and see title **HOUSING ASSOCIATIONS**.

(*e*) *Housing (Financial Provisions) Act, 1938, ss. 1, 6 ; 31 Halsbury's Statutes 570,*

SMALL DWELLINGS

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General.—The object of the Small Dwellings Acquisition Acts, 1899–1923 (*a*), is to enable local authorities to assist persons of limited means to acquire houses for the purpose of living in them. [562]

Power to make Advances.—A local authority has power to advance money to the resident of any house within the area of the authority for the purpose of enabling him to acquire the ownership of that house (*b*). Ownership in this connection means such interest or combination of interests in a house as, together with the interest therein of the purchaser, will constitute either a fee simple in possession or a leasehold interest in possession of at least sixty years unexpired at the date of the purchase (*c*).

An advance may be made to a person intending to construct a house, as well as to a person actually resident in an existing house (*d*). When this is done, the advance may be made by instalments as the building of the house progresses, so that the total advance does not at any time before the completion of the house exceed 50 per cent. of the value of the work done up to that time on the construction of the house including the value of the interest of the person receiving the advance in the site on which the house is being erected (*e*).

No advance may be made where in the opinion of the local authority the market value of the house exceeds £800 (*f*).

The advance must be repaid with interest within such period not exceeding thirty years from the date of the advance as may be agreed upon (*g*). Repayment may be made either by equal instalments of principal, or by an annuity of principal and interest combined. Payments on account of principal or interest may be made either weekly or at any period not exceeding a half-year as may be agreed (*h*).

(*a*) 18 Halsbury's Statutes 881 (1899 Act), 961 (Housing, Town Planning, etc., Act, 1919, Part III.), 989 (Housing, etc., Act, 1923, Part III.).

(*b*) 1899 Act, s. 1 (1); 18 Halsbury's Statutes 881.

(*c*) *Ibid.*, s. 10 (2).

(*d*) 1923 Act, s. 22 (a); 18 Halsbury's Statutes 989.

(*e*) *Ibid.*, s. 22 (e); *ibid.*, 990.

(*f*) See *ibid.*, s. 22 (b); *ibid.*, by which this limit was increased from £800 to £1,200. The original limit of £800 was restored by the Housing Act, 1935, s. 92 (1); 28 Halsbury's Statutes 257.

(*g*) 1899 Act, s. 1 (2); 18 Halsbury's Statutes 881.

(*h*) *Ibid.*, s. 1 (3); *ibid.*, 882.

Before making an advance the local authority must satisfy themselves : (a) that the applicant for the advance is resident, or intends to reside, in the house (*i*) ; (b) that he is not already the proprietor (*k*) of a house to which the statutory conditions (*l*) apply ; (c) that the value of the ownership of the house is sufficient ; (d) that the title to the ownership is one which an ordinary mortgagee would be willing to accept ; (e) that the house is in good sanitary condition and good repair, and (f) that repayment to the local authority is secured by an instrument vesting the ownership of the house in the local authority subject to a right of redemption by the applicant. The instrument must not contain anything inconsistent with the provisions of the Acts (*m*).

The market value of a house in respect of which an advance is to be made must be ascertained by means of a valuation duly made on behalf of the local authority. The amount of the advance must not exceed 90 per cent. of the market value as so ascertained (*n*). [563]

Local Authorities.—The local authorities for the purposes of the Act are county councils and county borough councils (*o*). If, however, the council of an urban district (not being a county borough) or of a rural district pass a resolution undertaking to act under the Act, that council becomes the local authority in that district to the exclusion of any other authority. When the population of the district of a district council is (according to the last census) less than 10,000, the consent of the county council is necessary to that district council assuming the powers of the Act (*o*). If a district council are dissatisfied by any failure of the county council to give their consent, they may appeal to the M. of H. ; and the Minister may, if he thinks fit, give his consent, which has the same effect as a consent of the county council (*o*).

Where a district council becomes the local authority for the purposes of the Act all powers, rights and liabilities of the county council in respect of advances already made by them under the Act for the purchase of a house in the district vest in the district council, subject to the payment by them to the county council of the outstanding principal and interest of such advances (*p*). [564]

Conditions Affecting Houses.—When an advance has been made in respect of a house the house is held subject to certain conditions known as the statutory conditions, which continue until the whole of the advance has been repaid with interest (*q*). The statutory conditions are as follows : (a) every sum due in respect of principal or interest must be punctually paid ; (b) the proprietor of the house must reside in the house (*r*) ; (c) the house must be kept insured against fire to the satisfaction of the authority and the receipt for the premiums produced when required by them ; (d) the house must be kept in good sanitary condition and good repair ; (e) the house must not be used for the sale

(*i*) When an advance is made in respect of a house in course of construction, the applicant must intend to reside in the house when constructed. The Housing, etc., Act, 1923, s. 22 (a) ; 13 Halsbury's Statutes 989.

(*k*) That is the person in whom the interest of the purchaser of the ownership of the house is for the time being vested, see the 1899 Act, s. 10 (3) ; *ibid.*, 886.

(*l*) See *infra*.

(*m*) 1899 Act, s. 2 ; 13 Halsbury's Statutes 882.

(*n*) 1923 Act, s. 22 (d) ; *ibid.*, 990.

(*o*) 1899 Act, s. 9 (1) ; *ibid.*, 885.

(*p*) *Ibid.*, s. 9 (2) ; *ibid.*, 886.

(*q*) *Ibid.*, s. 3 ; *ibid.*, 882.

(*r*) This condition is subject to special provisions ; see *supra*.

of intoxicating liquors, or in such a manner as to be a nuisance to adjacent houses (s).

The authority have power at all reasonable times to enter the house by any person authorised by them in writing for the purpose of ascertaining whether the statutory conditions are complied with (s). [565]

The Condition of Residence.—An advance may be made to an applicant who intends to reside in a house, if he undertakes to begin to reside therein within such period, not exceeding six months from the date of the advance as the authority may fix. In such a case the statutory condition requiring residence is suspended during that period (t).

The authority may allow a proprietor to permit (by letting or otherwise) a house to be occupied as a furnished house by some other person during a period not exceeding four months in the whole in any twelve months, or during an absence from home for the purpose of performing any duty in connection with an office, service, or employment held or undertaken by the proprietor (u), and the condition requiring residence is suspended while such permission continues.

On the death of a proprietor the condition of residence is suspended for a period of twelve months or until any earlier date at which his personal representatives assent to the vesting of the ownership or interest of the proprietor in the course of administration (x).

If the proprietor becomes bankrupt, or his estate is administered in bankruptcy under sect. 130 of the Bankruptcy Act, 1914, and an arrangement under the principal Act is made with the trustee in bankruptcy, the condition may, if the authority see fit, be suspended during the continuance of the arrangement (x).

Where an advance is made to a person intending to construct a house, the condition as to residence is construed as requiring that the borrower shall be a person intending to reside in the house when it has been constructed (a).

The condition as to residence has effect only for a period of three years from the date when the advance is made, or from the date on which the house is completed, whichever is the later; and compliance with the condition may at any time be dispensed with by the authority (b). [566]

Liability and Rights of Proprietor.—The proprietor is personally liable for the repayment of any sum due in respect of an advance until he ceases to be the proprietor by reason of a transfer (c).

The proprietor may, with the permission of the authority (which may not be unreasonably withheld), at any time transfer his interest in the house. A transfer must be made subject to the statutory conditions (d). No permission is necessary for the creation by the proprietor of a charge on his interest in the house provided the charge does not affect any of the rights or powers of the authority (e). [567]

Default in Complying with the Statutory Conditions.—When default is made in complying with the statutory condition as to residence the authority may take possession of the house; and where default is made

(s) 1899 Act, s. 3; 13 Halsbury's Statutes 882.

(t) *Ibid.*, s. 7 (1); *ibid.*, 885.

(x) *Ibid.*, s. 7 (3); *ibid.*

(b) *Ibid.*, s. 22 (c); *ibid.*, 990.

(d) *Ibid.*, s. 3 (2); *ibid.*

(u) *Ibid.*, s. 7 (2); *ibid.*

(a) 1923 Act, s. 22 (a); *ibid.*, 989.

(c) 1899 Act, s. 4 (1); *ibid.*, 883.

(e) *Ibid.*, s. 4 (2); *ibid.*

in complying with any of the other statutory conditions the authority may either take possession of the house, or order a sale of the house without taking possession (*f*). In the case of the breach of any condition, other than that for punctual payment of principal and interest, the authority must, previously to taking possession or ordering a sale, by notice in writing delivered at the house and addressed to the proprietor call upon him to comply with the conditions. If the proprietor within fourteen days after the delivery of the notice gives an undertaking to the authority to comply with the notice, and within two months after such delivery in fact complies with the notice, the authority cannot take possession or order a sale (*g*). [568]

Recovery of Possession.—When an authority take possession of a house all the estate right or interest of the proprietor in or to the house vests in the authority. The authority may either retain the house under their own management, or sell or otherwise dispose of it as they think convenient (*h*).

Where the authority take possession, they must pay to the proprietor either such a sum as shall be agreed upon, or a sum equal to the value of the interest of the house at the disposal of the authority after deducting therefrom the amount of the advance, and any sum due for interest. Where the authority sell the house it seems that the net proceeds of sale are to be taken as the value of the interest in the house which is at the disposal of the authority. Where there is no sale, then the value (if not agreed) must be settled by a county court judge or arbitrator (*i*).

If the sum payable to the proprietor is not paid within three months of the date on which possession is taken, it carries interest at the rate of 3 per cent. per annum from that date (*k*).

Costs of, or incidental to, the taking of possession, the sale or other disposal (if any) and of the arbitration (if any), which are incurred by the authority before the sum payable to the proprietor has been determined, are deducted from that sum and retained by the authority (*l*).

Where the authority are entitled to recover possession, they may do so (whatever the value of the house) either under the County Courts Act, 1934, sect. 48 (*m*), or under the Small Tenements Recovery Act, 1838 (*n*), as in the cases provided for by those Acts; and in either case possession may be recovered as if the authority were the landlord and the proprietor of the house the tenant (*o*). [569]

Sale.—Where an authority order the sale of a house without taking possession they must put it up for sale by auction. Out of the proceeds they may retain any sum due to them on account of interest or principal in respect of the advance, and all costs, charges and expenses properly incurred by them in connection with the sale. The balance, if any, must be paid to the proprietor (*p*).

If the authority cannot sell for such a sum as will recoup them for the principal and interest and the costs, charges and expenses, they may

(*f*) 1899 Act, s. 3 (3); 18 Halsbury's Statutes 883.

(*g*) *Ibid.*, s. 3 (4); *ibid.*

(*h*) *Ibid.*, s. 5 (1); *ibid.*

(*i*) *Ibid.*, s. 5 (2); *ibid.*, 884.

(*k*) *Ibid.*, s. 5 (3); *ibid.*

(*l*) *Ibid.*, s. 5 (4); *ibid.*

(*m*) 27 Halsbury's Statutes 113.

(*n*) 10 Halsbury's Statutes 324.

(*o*) 1899 Act, s. 5 (5); 18 Halsbury's Statutes 884.

(*p*) *Ibid.*, s. 6 (1); *ibid.*

take possession of the house. In such a case they are not liable to pay any sum to the proprietor in respect of the taking of possession (q). [570]

Redemption.—The proprietor of a house in respect of which an advance has been made may at any of the usual quarter days, provided he gives one month's notice of his intention and pays everything due on account of interest, repay to the authority either the whole of the outstanding principal, or any part thereof, being ten pounds or a multiple of ten pounds (r).

Where repayment is being made by an annuity of principal and interest combined, the amount outstanding at each of the usual quarter days and the amount by which the annuity will be reduced on payment off of a part of the principal in accordance with the foregoing provisions is determined by a table which must be annexed to the instrument by which repayment of the advance is secured (r).

On a redemption, the authority may endorse on, or write at the foot of, or annex to, the mortgage a receipt under seal which states the name of the person who pays the money. Such a receipt, if executed by the authority, operates as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under the mortgage. A receipt is not liable to stamp duty and must be granted free of cost to the person who pays the money (s).

Where, by the receipt, it appears that the money has been paid by a person who is not entitled to the immediate equity of redemption, the receipt (unless otherwise provided) operates as a statutory transfer of mortgage by deed to him. This does not apply where the mortgage is paid off out of capital moneys or other moneys in the hands of personal representatives or trustees properly applicable for the discharge of the mortgage unless expressly provided (t).

Where the mortgage consists of a mortgage and a further charge or of more than one deed, it is enough if the receipt refers either to all the deeds or to the aggregate amount secured thereby, and is endorsed on, written at the foot of, or annexed to, one of the mortgage deeds (u).

The same covenants are implied in a receipt as would have been implied had the authority executed a deed of reconveyance of the mortgaged property and had been therein expressed to convey as mortgagor (a).

The right to a receipt does not confer upon the mortgagor the right to keep alive a mortgage which he has paid off so as to affect prejudicially any subsequent incumbrancer. Where there is no right to keep the mortgage alive a receipt cannot operate as a transfer (b).

The person redeeming is entitled to require that the mortgaged property shall be re-assured to him by deed. He is not compelled to accept a receipt (c). [571]

(q) 1899 Act, s. 6 (2); 13 Halsbury's Statutes 864.

(r) *Ibid.*, s. 1 (5); *ibid.*, 881.

(s) 1919 Act, s. 49; *ibid.*, 961. The form of receipt contained in Part I. of the Fourth Schedule to the Act; *ibid.*, 962, must be used.

(t) *Ibid.*, Fourth Schedule, Part II., para. (1); *ibid.*

(u) *Ibid.*, para. (4); *ibid.*

(a) *Ibid.*, para. (3); *ibid.*

(b) *Ibid.*, para. (2); *ibid.*

(c) *Ibid.*, s. 49, *supra*.

Administrative and Financial Provisions.—The authority must keep at their offices a book containing a list of any advances made by them under the Act. The book must contain in respect of each advance : (i.) a description of the house comprised in the mortgage ; (ii.) the amount advanced ; (iii.) the amount for the time being repaid ; (iv.) the name of the proprietor for the time being of the house ; and (v.) such other particulars as the authority think fit to enter (d). The book must be open to inspection at the office of the authority during office hours free of charge (e).

A local authority must keep a separate account of their receipts and expenditure in connection with the making of advances (f). If in any financial year the expenses of an authority, not reimbursed by receipts, exceed in a county a sum equal to one halfpenny in the pound upon the rateable value of the county, or in a county borough or urban or rural district a sum equal to one penny in the pound upon the rateable value of the borough or district, no further advance may be made by the council until after the expiration of five years from the end of that financial year (g).

A local authority may borrow to meet their expenditure in connection with the making of advances (h). The Public Works Loan Commissioners may lend to a local authority any money which the authority have power to borrow (i).

Capital money received by an authority in payment or discharge of any advance, or in respect of the sale or disposal of a house of which they have taken possession must be applied, with the sanction of the M. of H., either in repayment of debt, or for any other purpose for which capital money may be applied (k). [572]

London.—The Small Dwellings Acquisition Act, 1899, applies to London. Sect. 9 (10) (l) provides that sanitary authorities in London (metropolitan borough councils and the city corporation) shall have the same power as an U.D.C. Expenses are to be paid out of the general (or, in the case of the City, consolidated) rate, with power to borrow as for the purposes of the London Government Act, 1939 (m). [573]

(d) 1899 Act, s. 8 (1) ; 13 Halsbury's Statutes 885.

(e) *Ibid.*, s. 8 (2) ; *ibid.*

(f) *Ibid.*, s. 9 ; *ibid.*

(g) *Ibid.*, s. 9 (4) ; *ibid.*, 886.

(h) *Ibid.*, s. 9 (5) ; *ibid.*, as amended by L.G.A., 1933.

(i) L.G.A., 1929, s. 74 ; 10 Halsbury's Statutes 931.

(k) 1899 Act, s. 9 (8) ; 13 Halsbury's Statutes 886.

(l) 18 Halsbury's Statutes 886.

(m) 32 Halsbury's Statutes 259.

SMALL HOLDINGS

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Introductory.—The statutes dealing with the provision and management of small holdings are the Small Holdings and Allotments Act, 1908 (*a*), the Land Settlement (Facilities) Act, 1919 (*b*), the Small Holdings and Allotments Act, 1926 (*c*), and the Agricultural Land (Utilisation) Act, 1931 (*d*) ; various statutory rules and orders relating to the subject are noted in the text. The effect of the “construction” sections, culminating in sect. 20 (2) of the Act of 1931, is that the four statutes above mentioned are construed as one. Part I. of the Act of 1908 was repealed by the Act of 1926 which substitutes new powers and duties with reference to small holdings, following the post-war period of intensive development under the Land Settlement (Facilities) Act, 1919.

The object of the legislation is the provision of small holdings, either with or without dwelling-houses or buildings, for persons able and willing to cultivate the holdings personally. Smallholders may either rent or purchase their holdings, but normally holdings are rented (*e*). A small holding is defined by the Act of 1908, sect. 61 (1) (amended by sect. 16 of the Act of 1926), as an agricultural holding which exceeds one acre, and either does not exceed fifty acres, or (if exceeding fifty acres), is, at the date of sale or letting, of an annual value for the purposes of income tax not exceeding £100. “Agriculture” includes horticulture and the use of land for any purpose of husbandry, inclusive of the keeping and breeding of live-stock, poultry or bees, and the growth of fruit, vegetables and the like. (Act of 1908, sect. 61 (1)).

Central and Local Authorities.—The central authority concerned with the provision of small holdings is the M. of A. ; in general the

(*a*) 1 Halsbury's Statutes 257.

(*b*) *Ibid.*, 288.

(*c*) *Ibid.*, 322.

(*d*) 24 Halsbury's Statutes 46.

(*e*) The total area of land held by councils in England and Wales for small holdings at December 31, 1937, was 467,544½ acres ; during the period 1908–1937, the area of land sold by councils for small holdings was 7,269½ acres, divided into 928 holdings ; the land retained by councils at December 31, 1937, was divided into 28,822 holdings let to 25,333 tenants, the total rent-roll being £973,251. The number of holdings varies between 2,535 in the Isle of Ely and 9 in Rutland. (Report of the Land Division, M. of A. for 1937.)

powers of the Ministry are of a supervisory nature, but the Agricultural Land (Utilisation) Act, 1931, gave the Ministry certain powers of providing small holdings for unemployed persons, and by sect. 11, the Ministry might arrange for the management by local authorities of small holdings so provided. The special powers of providing small holdings for the unemployed expired eight years from the commencement of the Act of 1931. The Ministry also manages certain small holdings colonies provided as a result of war-time legislation, but this function does not affect local authorities (f).

Sect 9 of the Act of 1931 provides that if the M. of A. is satisfied that the council of a county have not provided sufficient small holdings to satisfy the demand of persons who desire to buy or lease holdings and can and will themselves cultivate them properly, the Minister may, without prejudice to the powers and duties of the council, himself provide holdings. The Minister's default powers can be used only after notice to the council concerned, and, if the council represent that in their opinion sufficient holdings have been provided, a local inquiry must be held by a person to be agreed upon between the Minister and the council or, failing agreement, by a barrister of not less than ten years' standing nominated by the President of the Law Society. Sect. 10 of the Act of 1931 invests the Minister with the necessary powers enabling him to provide and manage small holdings ; holdings provided by the Minister in exercise of his default powers may be managed by local authorities as agent for the Minister under sect. 11 of the Act of 1931.

The M. of A. and his officers have, for the purpose of any inquiry in pursuance of the Small Holdings Acts, the same powers as the M. of H. and his inspectors have for the purpose of an inquiry under the P.H.A.s. (as to which see now sect. 290 of the L.G.A., 1933) (Act of 1908, sect. 57 (1)). Notices of the inquiry shall be given and published as generally or specially directed by the M. of A. (sect. 57 (2)).

The local authorities charged with the provision of small holdings are county councils (g) (Act of 1926, sect. 1). By sect. 9 of the Act of 1926, a county council may make arrangements with the council of any borough or urban or rural district in the county for the exercise by the borough or district council, as agents for the county council, of any powers of the county council in respect of the acquisition, adaptation and management of small holdings ; terms and conditions are a matter for arrangement between the councils, and the borough or district council may undertake to pay the whole or part of any loss incurred by the county council in connection with the holdings. Any sum paid in pursuance of such undertakings shall be defrayed as part of the general expenses of the council in the execution of the P.H.A. No such arrangement shall authorise the exercise by any other council, on behalf of the county council, of the power of submitting to the M. of A. proposals and estimates for the purpose of obtaining contributions from the Minister.

Sect. 50 of the Act of 1908 requires every county council (other than

(f) Estates acquired and still retained by the M. of A. & F. at March 31, 1938, under the Small Holdings Colonies Acts, 1916 and 1918, and The Sailors and Soldiers (Gifts for Land Settlement) Act, 1916, comprised 10,122 acres, including 1,310 acres held on lease ; these estates are situate at Amesbury (Wilts.), Sutton Bridge and Holbeach (Lincs.), Rolleston (Notts.), Acton Park (Denbigh), and Bosbury (Hereford). (Report of the Land Division, M. of A. for 1937.)

(g) "County council" includes county borough council. (Act of 1908, s. 61 (1).)

the L.C.C.) to establish a small holdings and allotments committee; the same provisions apply to a county borough so far as small holdings (but not allotments) are concerned, but a county borough council may appoint its small holdings committee, if duly qualified, to be allotment managers. The small holdings committee consists wholly or partly of members of the council and, in the case of a county council, is now a statutory sub-committee of the agricultural committee established under sects. 7 and 8 (2) of the M. of A. & F. Act, 1919; a small holdings sub-committee appointed by an agricultural committee must include one or more members representing tenants of small holdings and allotments. The statutory delegation of powers to this sub-committee contained in sect. 8 (2) has now expired, and the functions of the sub-committee are regulated by sect. 50 of the Act of 1908. By sect. 50 (1) all matters (except the power of raising a rate or borrowing money), relating to the exercise of the small holdings functions of the council stand referred to the statutory committee whose report thereon must (except in matters of urgency) be received and considered by the council before the council exercises any of its small holdings powers; and a council may delegate to the statutory committee, with or without restrictions or conditions, any of their small holdings functions except the raising of a rate or the borrowing of money. The statutory committee may delegate any of their powers to sub-committees, consisting either wholly or partly of members of the committee, and in appointing any sub-committee to which is committed the powers of management of small holdings, shall have regard to the advisability of including among the members of the sub-committee members of the councils of the minor local authorities in whose areas the small holdings are situated, and other persons acquainted with the needs and circumstances of the area for which the sub-committee (h) act (sect. 50 (2)). Where receipts and payments of money for small holdings purposes are entrusted by the council to the statutory committee, the accounts of such receipts and payments are accounts of the council, and are made up and audited accordingly (sect. 50 (3)).

Sect. 59 of the Act of 1908 requires the submission to Parliament of an annual report of the proceedings of the M. of A. and of the several local authorities; the latter must report annually to the M. of A. before such date as the Minister may fix. [574].

Powers and Duties of County and County Borough Councils.—The principal statutory provisions as to powers and duties are contained in Part I. of the Act of 1926, which replaces Part I. of the Act of 1908. Except where the contrary is stated references hereinafter to county councils include references to county borough councils. By sect. 1 of the Act of 1926, where a county council are satisfied that there is a demand for small holdings in their county by persons who desire to buy or lease small holdings, and who can and will cultivate them properly, the council is under a duty to provide small holdings, if they are of opinion that they can do so without loss (i); but the council have the power of providing holdings, subject to Part I. of the Act of

(h) In the case of small holdings sub-committees appointed by agricultural committees, the M. of A. requires, in practice, that in addition to the statutory representation of small holders, the sub-committees shall include representatives of agricultural labour and of ex-service men.

(i) No consent or approval of the M. of A. is required if no loss is anticipated.

1926, notwithstanding that they are of opinion that a loss may be incurred.

It is necessary to bear in mind the distinction between pre-1926 and post-1926 acquisitions, as the pre-1926 acquisitions were included in settlements of capital losses made between the M. of A. and the several county councils under sects. 26 and 27 of the Land Settlement (Facilities) Act, 1919, and the Land Settlement (Facilities) Amendment Act, 1925.

In the case of post-1926 acquisitions, in respect of which it appears to a county council that a loss will be entailed, it is the duty of the council under sect. 2 of the Act of 1926, to submit to the M. of A. proposals and estimates (both of capital and income); the estimates must be in the form prescribed by the Small Holdings, etc. (Contributions towards Losses) Regulations, 1926 (*k*). If the M. of A. approves the proposals and estimates, with or without modification, the Minister may undertake to make contributions out of the Small Holdings and Allotments Account (*l*) towards the losses likely to be incurred, but not exceeding 75 per cent. of the estimated losses in any year; and in considering the estimates the Minister of Agriculture must satisfy himself that the estimates are made on the basis of the full fair rent being charged for each holding, and the best selling price reasonably obtainable being attributed to any surplus land (1926 Act, sect. 2 (2)). "Full fair rent" in relation to a small holding means the rent which a tenant might reasonably be expected to pay for the holding if let as such, the landlord undertaking to bear the cost of structural repairs (sect. 2 (6)). By sect. 2 (3) the M. of A. is empowered to reduce his contributions if the approved proposals are varied without his consent, or to increase or reduce his contribution (subject to the 75 per cent. limit) if the approved proposals are varied with his consent. The power of submitting proposals with a view to obtaining a M. of A. contribution under sect. 2 is extended to schemes for the equipment and adaptation for small holdings of land acquired for small holdings purposes before the commencement of the Act of 1926, and of land acquired under the Act of 1926 without the consent of the Minister (sect. 2 (5)).

Sched. II. to the Agricultural Land (Utilisation) Act, 1931, adds two sub-sections to sect. 2 of the Act of 1926: sub-sect. (7), by which the consent of the M. of A., which may be conditional or subject to conditions, is required on the sale, etc., for non-small holdings purposes of land in respect of which a contribution under sect. 2 of the Act of 1926 has been made or undertaken to be made by the Minister; and sub-sect. (8), which empowers the Minister to contribute towards expenses reasonably incurred by a council in preparing proposals or estimates for submission to the Minister, although the proposals and estimates are not, in fact, submitted to him, or, if submitted, are not approved.

In addition to their powers of providing small holdings, county councils are empowered by sects. 13 and 14 of the Act of 1926 (as amended by the Act of 1931) to advance money for the purchase and equipment of small holdings. Sect. 13 provides that where a person

(*k*) S.R. & O., 1927, No. 581. For the M. of A.'s power of making regulations for the purposes of s. 2 of the Act of 1926, see *ibid.*, s. 2 (4).

(*l*) The Agricultural Land (Utilisation) Act, 1931, Sched. II., substituted the term "Small Holdings and Allotments Account" for the words "moneys provided by Parliament" in s. 2 (2) of the Act of 1926; as to the Small Holdings and Allotments Account, see "Finance," *infra*.

who is desirous of purchasing a small holding, which he is able to cultivate properly, has agreed with the owner for the purchase thereof, the council of the county in which the holding is situated may advance to the purchaser on the security of the holding an amount not exceeding nine-tenths of the value of the holding repayable with interest at an agreed rate by a terminable annuity for a period not exceeding sixty years; and the annuity is subject to the same provisions as apply on a sale of a small holding by a council (*n*). Before making any advance the council must be satisfied that the title to the holding is good, that the sale is made in good faith, and that the price is reasonable (*n*). Sect. 14 empowers a county council (a) to advance money to the owners of small holdings provided by, or purchased with the assistance of, the council (*o*) for the purpose of constructing, altering or adapting houses and farm buildings on such holdings, and (b) to guarantee the repayment to a society (*p*) incorporated under the Building Societies Acts, 1874 to 1894, or the Industrial and Provident Societies Acts, 1893 to 1939, of advances, and interest thereon, made by the society to a member thereof for purposes similar to those noted in (a), *supra*. Before granting assistance under sect. 14 the council must be satisfied that the houses or farm buildings in question will, when the proposed work is completed, be in all respects fit, in the case of houses, for human habitation, and, in the case of both houses and farm buildings, suitable and necessary for the requirements of the small holdings (sect. 14 (2)). An advance to which sect. 14 applies must be secured by mortgage, and must not exceed 90 per cent. of the value of the mortgagor's interest in the property; and repayment may be by instalments of principal or by an annuity of interest and principal combined, so, however, that on breach of any of the conditions governing the advance the balance for the time being unpaid shall become repayable on demand by the council (sect. 14 (3)). Advances may be made by instalments as work proceeds up to 50 per cent. of the value of uncompleted work (*ibid.*). A valuation on behalf of the council must precede any advance (*ibid.*). It will be observed that the conditions of an advance or guarantee under sect. 14 are not restricted to those applicable to a terminable annuity on the sale of a small holding, as is the case when an advance is made under sect. 13; but in practice a holding to which sect. 14 applies will normally be subject to the terminable annuity conditions by reason of an advance by the council under sect. 13, or a sale by the council under the powers dealt with *post*, at p. 358; and it is therefore necessary when preparing any mortgage or further charge under sect. 14, to ensure that nothing in that document purports to release the small holding, or the borrower, from any statutory restrictions which may already be applicable. [575]

(*m*) As to purchase of a small holding from a council, and as to provisions with respect to an annuity, see *post*, pp. 353 *et seq.*

(*n*) Where a council borrows money for the purpose of making an advance under s. 13, the M. of H. requires a certificate as to these matters.

(*o*) As originally enacted, s. 14 of the Act of 1926 applied only to holdings provided by the council; the Act of 1931 (Sched. II.) extends the operation of s. 14 to holdings purchased with the assistance of the council.

(*p*) S. 20 (1) of the Act of 1931 extends the meaning of the word "society" so as to include unincorporated bodies, but this extension does not appear to authorise the guaranteeing of advances made by a society not incorporated under the statutes named in s. 14.

Acquisition of Land—General.—Sect. 4 of the Act of 1926 confers on county councils a general power of purchasing (*q*) or taking on lease land (*r*), whether situate within or without the county, for the purpose of providing small holdings for persons who desire to buy or lease and will themselves cultivate the holdings and are able to cultivate them properly. Sect. 19 of the Act of 1919 gives a right of entry and inspection to any person authorised in writing by the council in relation to land specified in the authority, with a view to determining whether the land is suitable for acquisition; and obstruction of an authorised person is punishable on summary conviction by a fine not exceeding £25. For the purpose of purchase by agreement the Act of 1908 (sect. 38) incorporates in the Small Holdings Acts the provisions of the Lands Clauses Acts, except the provisions thereof relating to the purchase and taking of land otherwise than by agreement. By sect. 17 (1) of the Act of 1926, sect. 82 of the Lands Clauses Consolidation Act, 1845 (relating to the costs of conveyance) is excluded, and therefore a county council when buying by agreement is not now liable for the vendor's costs of conveyance unless express provision is made therefor in the contract of sale. Sect. 38 of the Act of 1908 also makes applicable to purchases by agreement for small holdings purposes, sect. 173 of the L.G.A., 1933 (*s*), which empowers the Chancellor and Council of the Duchy of Lancaster to sell Duchy lands to a local authority. Sect. 40 of the Act of 1908 empowers the following persons to lease land to a council for small holdings purposes, for a term not exceeding thirty-five years with or without such right of renewal as is contained in sect. 44 of the Act of 1908, relating to renewal of tenancy of land hired compulsorily (*post*, p. 350):

- (1) Any person having power to lease land for agricultural purposes for a limited term, but subject to any consent or conditions which may be applicable.
- (2) The Commissioners of Woods, with the consent of the Treasury in respect of Crown lands; the Chancellor and Council of the Duchy of Lancaster in respect of Duchy land; the Duke of Cornwall or other the persons for the time being having power to dispose of Duchy of Cornwall land.
- (3) The incumbent of an ecclesiastical benefice in respect of glebe or other land belonging to the benefice, with the consent of the Ecclesiastical Commissioners alone and subject to their approval. Sect. 8 of the Act of 1919 renders unnecessary the consent of the patron on a sale of glebe land to a council for small holding purposes.

The position of a person having the powers of a tenant for life under the Settled Land Act, 1925, is modified by sect. 40 (4), (5) of the Act of 1908 as follows:

- (1) a lease, sale or exchange of settled land for small holdings purposes may be at such price, consideration or rent as having regard to the small holdings purposes and to all the circum-

(*q*) Any expenses incurred by a council in the enfranchisement of any land acquired by them for small holdings (or, *semble*, in the extinguishment of manorial incidents since January 1, 1926), or in redeeming land tax, quit rents or other perpetual annual payments are deemed to have been incurred in the purchase of the land (Act of 1908, s. 61 (3)).

(*r*) "Land" includes any right or easement in or over land (Act of 1908, s. 61 (2)).

(*s*) Replaces s. 178 of the P.H.A., 1875, referred to in s. 38 of the Act of 1908.

stances of the case, is the best that can reasonably be obtained ; *semble*, this enables a tenant for life to accept a consideration which is less than the full market value of the land ; and

- (2) a person having the powers of a tenant for life may grant the settled land or a part thereof to a county council for small holdings purposes in perpetuity at a fee or other rent secured by condition of re-entry, or otherwise as may be agreed upon ; this sub-sect. amplifies the power of sale in consideration of a perpetual rent or terminable rent contained in sect. 39 of the Settled Land Act, 1925. A council is empowered to covenant to pay a fee farm rent or terminable rent-charge by sect. 7 of the Act of 1919, as amended by the Act of 1926.

Sect. 29 of the Act of 1919 gave a tenant for life a limited power of granting or leasing land for small holdings without consideration, or for a consideration less than the market value ; this power is duplicated in sect. 57 of the Settled Land Act, 1925.

As to acquisition of commons, open spaces, etc., see sect. 28 of the Act of 1919, at *post*, p. 352.

Sect. 9 of the Act of 1919 enables any person having power to sell land authorised to be acquired by a county council under the Small Holdings Acts, to sell the land wholly or partly in consideration of a perpetual annuity payable by the council. Where the vendor is not absolutely entitled for his own benefit to the land sold, the annuity must be treated as though the land had been sold for a capital sum, and that sum invested in the purchase of an annuity. A council liable to pay an annuity under sect. 9 may at any time redeem the annuity ~~on six months' notice~~ (see Act of 1926, sect. 21 and Sched. I.) and on payment of an agreed consideration or, failing agreement, such sum as would, according to the average price at the expiration of the notice of the prescribed Government securities, yield annual dividends equal to the amount of the annuity. For the provisions affecting annuities, see Sched. I. to the Act of 1918, the Land Settlement (Annuities) Regulations, 1919 ; S.R. & O., 1919, No. 1961, and, for the prescribed securities, see S.R. & O., 1934, No. 281.

If a council are unable to obtain by agreement and on reasonable terms suitable land for small holdings purposes (*t*), they may purchase or take on lease such land compulsorily (Act of 1926, sect. 4) in accordance with the provisions of the Small Holdings Acts noted *infra* (*u*).

The operation of sect. 4 is governed by two provisos : (a) that a county council shall not acquire land for small holdings purposes without the consent of the M. of A. unless the council are satisfied that the transaction will not involve any loss to the council (*a*), and (b) that before acquiring any land outside the county the acquiring council shall consult with the council of the county in which the land

(*t*) An injunction will not be granted to restrain a county council from proceeding with a compulsory acquisition, on the ground that this condition precedent has not been satisfied, if the M. of A. has seisin of the matter and is considering the confirmation of the order under s. 39 of the Act of 1908 (*Reddaway v. Lancashire County Council* (1925), 41 T. L. R. 422).

(*u*) The provisions of the Small Holdings and Allotments Acts, 1908 to 1931, as to acquisition and dealings with land are not affected by Part VII. of the L.G.A., 1933 (*ibid.*, s. 179, Sched. VII.).

(*a*) No contribution may be made by the Minister towards the cost of acquisition where land is acquired without his consent, but he may contribute towards the cost of equipment and adaptation under s. 2 (5) of the Act of 1926.

is situated. This requirement does not confer any right of veto on the council which is consulted, and there does not appear to be any power enabling the acquiring council to contribute (except in so far as they and their small holders are ratepayers) towards any additional expense incurred by the council in whose area the small holdings are established by reason of increase of population or the formation of new centres of population; on the other hand, the acquiring council may hesitate to embark on a scheme which primarily would benefit persons who, on the completion of the scheme, would no longer be ratepayers in the area of the acquiring council.

The powers of acquisition of land for small holdings include power to acquire land for the purpose of letting, to tenants of small holdings, rights of grazing and other similar rights, and stints and other alienable common rights may also be acquired; grazing and similar rights may be attached to or let with small holdings at the discretion and subject to the regulations of the council (1908, sect. 42 as amended by 1919, sect. 25 and Sched. II.).

Sect. 43 of the Act of 1908 (as amended by sect. 25 and the Second Schedule of the Act of 1919) requires a county council, on proof that a labourer has been regularly employed on any land acquired by the council for small holdings purposes, and that the acquisition has deprived him of employment, and that there is no employment of an equally beneficial character available for him in the same locality, to pay to him such compensation as the council think just for loss of employment or expense of moving to another locality; the Act of 1931, by sect. 21 (2) precludes payment of compensation to any person for whom a small holding is provided under Part II. of the Act of 1931, which deals with the provision by the M. of A. of small holdings for the unemployed. Any sum paid by way of compensation under sect. 43 is treated as part of the expenses of acquisition of the land.

By sect. 2 (2) of the Land Settlement (Facilities) Act, 1919, a council which has agreed to purchase land for small holdings purposes subject to the interest of the person in possession thereof, where that interest is not greater than that of a tenant for a year or from year to year, may at any time after the agreement has been made, and after giving not less than fourteen days' notice to the person in possession, enter on and take possession of the land or of such part thereof as is specified in the notice, without previous consent, but subject to paying compensation to the person in possession as though he had been required to give up the land before the termination of his interest, by reason of a compulsory purchase order. Sect. 2 (3) provides that where a notice under the foregoing subsection relates to land on which there is a dwelling-house, and the length of notice is less than three calendar months, the occupier of the dwelling-house may, by counter-notice, appeal to an arbitrator appointed, in default of agreement, by the President of the Surveyors Institution; the arbitration is held in accordance with the provisions of the Second Schedule to the Agricultural Holdings Act, 1923, and entry can be made only on such date and terms as are awarded by the arbitrator. Sect. 2 applies, with the prescribed adaptations, to a compulsory hiring order, or to an agreement to hire land.

Where a county council have purchased land for small holdings they shall apply to be registered as proprietors thereof under the Land Registration Act, 1925 (Act of 1926, sect. 11 replacing a corresponding provision of the Act of 1908). As to procedure on such application, see the Land Registration Act, 1925, sect. 100, the Land Registration

(England) Rules, 1925, Rules 63, 118, 119, 120 and 143, and the Land Registration Fee Orders, 1930, para. 12 (S.R. & O., 1930, No. 220) and 1939 (S.R. & O., 1939, No. 809).

On an application for registration by a county council, they may be registered as proprietors with any title authorised by the Act of 1925, and in practice application is generally made for registration with a possessory title ; but on a sale or lease for small holdings purposes of registered land, a purchaser or lessee from a county council shall be registered as proprietor of the interest transferred or created (being an interest capable of registration) with an absolute title, subject only to such incumbrances as may be created under the Small Holdings Acts, but freed from all other liabilities not being overriding interests ; and in any such case the remedy of any person claiming by title paramount to the county council in respect either of title or incumbrances, becomes a remedy in damages only, recoverable against the county council.

Lands acquired by a county council for small holdings purposes may be sold or let to a borough, urban district or parish council for allotment purposes, and lands acquired by a borough, urban district or parish council for allotments purposes may be sold or let to a county council for small holdings purposes ; in neither case do the provisions of the Lands Clauses Acts as to the sale of superfluous land apply (Act of 1908, sect. 45).

Where glebe land, or other land belonging to an ecclesiastical benefice, is hired for small holdings purposes the provisions of the Ecclesiastical Dilapidations Measure, 1923 (which relate to inspection and upkeep of buildings) do not apply to buildings on the land during the continuance of the hiring ; and on the termination of the tenancy, or within twelve months thereafter, the incumbent of the benefice may apply to the Ecclesiastical Commissioners for leave to remove and dispose of buildings erected for small holdings purposes, where they are useless to the benefice (Act of 1908, sect. 48).

Sect. 47 (2) of the Act of 1908, as amended by the Act of 1919, provides that, subject to any provision to the contrary in the agreement or order for hiring, a council which has hired land for small holdings purposes shall be entitled at the determination of the tenancy on quitting the land, to compensation under the Agricultural Holdings Act, 1923, for any improvement mentioned in Part I. of the Second Schedule to the Act of 1908 (market garden improvements), and for any improvement mentioned in Part II. of that schedule (as amended by the Act of 1926) (improvements of a permanent or semi-permanent character), which was necessary or proper to adapt the land for small holdings. Part II. improvements are dealt with as if the land were a holding to which sect. 48 of the Agricultural Holdings Act, 1923, applied, but in the case of a claim under sect. 47 (2) of the Act of 1908, the written consent of the landlord to the Part II. improvements need not be proved. In the case of land hired compulsorily the amount of compensation payable to the council under sect. 47 (2) shall be such sum as fairly represents the increase (if any) in the value to the landlord and his successors in title of the holding due to the improvements.

In the absence of any express provision in the agreement or order for hiring, it is arguable that a council is not entitled to recover from the landlord compensation for the matters mentioned in Part III. of the First Schedule to the Agricultural Holdings Act, 1923 (liming, manuring, etc.), where the improvements have in fact been made by the small holdings tenants, and not by the council, but the better

opinion appears to be that where the council have compensated their tenants for such improvements, they can claim to be treated as "the tenant" for the purposes of sect. 1 of the Agricultural Holdings Act, 1923. [576]

Compulsory Purchase.—Sect. 39 of the Act of 1908 lays down the procedure to be followed on a compulsory acquisition of land. A council may, subject to the provisions of Part I. of the First Schedule to the Act of 1908, submit to the M. of A. an order putting in force as respects the lands specified in the order, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement. Part I. of the First Schedule requires that the order shall be in the prescribed form, and shall contain the prescribed provisions for the purpose of carrying the order into effect and for the protection of the council and of persons interested in the land, and shall incorporate, subject to the necessary adaptations, the Lands Clauses Acts and sects. 77 to 85 of the Railways Clauses Consolidation Act, 1845 (b); but the modified application, by the First Schedule of the arbitration provisions is, in effect, superseded by the Acquisition of Land (Assessment of Compensation) Act, 1919. Publication of the order and notices (c) to owners, lessees and occupiers must be given in the prescribed manner (d). If within the prescribed period no objection to the order has been presented to the M. of A., or if every such objection has been withdrawn, the Minister must confirm the order without further inquiry; if an objection has been presented and is not withdrawn, the Ministry must forthwith cause a public inquiry to be held in the locality in which the land is situate, unless he considers that the objections relate exclusively to matters which could be dealt with in assessing compensation. The Minister of Agriculture may require any objector to state in writing the grounds of his objection (Act of 1926, sect. 17 (2)); and all persons interested in the land and such other persons as the person holding the inquiry may allow, are permitted to appear personally or by agent, and be heard. At public inquiries and at arbitrations held under Sched. I., witnesses may be heard, but not counsel or expert witnesses, except in such cases as the Ministry otherwise direct; this limitation is not affected by the Acquisition of Land (Assessment of Compensation) Act, 1919 (Act of 1926, sect. 17 (3)). Where an inquiry is held, the Ministry, before confirming the order, shall consider the report of the person who held the inquiry, and all objections made thereat. The provisions of the schedule as to arbitrations for the assessment of compensation are superseded by the Acquisition of Land (Assessment of Compensation) Act, 1919; as to this statute, see title COMPULSORY PURCHASE OF LAND.

(b) These sections refer to minerals lying under or near the land; in consequence of the incorporation of these sections an arbitrator in assessing compensation on a compulsory acquisition of the surface land, may leave out of account the risk of subsidence, and also the question whether or not the county council is in a position to avail itself of the remedies under the Railways Clauses Act (*Re Carlisle and Northumberland County Council* (1911), 75 J. P. 539).

(c) As to notices where negotiations for acquisition by agreement have failed and the land has been advertised for sale by public auction, see *Gaskell v. Somerset County Council* (1920), 84 J. P. 93, where on the balance of convenience the court refused to restrain the county council from serving notice of a compulsory acquisition order.

(d) The Small Holdings and Allotments (Compulsory Purchase) Regulations, 1936 (S.R. & O., 1936, No. 195), prescribe the form of order, method and times of giving notice and publishing, time for objections, notice of confirmation, service of notices, provision for purchase of a lessee's interest only, and definitions.

In construing, for the purposes of the schedule or any order made thereunder, the provisions of any statute incorporated with the order, the Act of 1908 together with the order is deemed to be the special Act, and the council are deemed to be the promoters of the undertaking (Sched. I., Part I. (7)).

Provision is made for payment to the Ecclesiastical Commissioners of compensation in respect of glebe land or of other land belonging to an ecclesiastical benefice (*ibid.* (8)).

By sect. 2 of the Land Settlement (Facilities) Act, 1919, a council who have made a compulsory purchase order, which has been confirmed, may at any time after notice to treat has been served, give not less than fourteen days' notice to each owner, lessee and occupier, and thereupon enter on and take possession of the land specified in the notice without previous consent or compliance with sects. 84 to 90 of the Lands Clauses (Consolidation) Act, 1845, but paying compensation and interest thereon as though those sections had been complied with. In such case, the power of withdrawal under sect. 39 (8) of the Act of 1908 (*vide post*, p. 351) cannot be exercised. [577]

Compulsory Hiring.—Compulsory hiring is effected by an order made (e) by a council under sect. 39 (2) of the Act of 1908; the provisions of Part I. of the Schedule apply, with the substitution of "hiring" for "purchase," and as modified by Part II. of the Schedule. The principal modifications effected by Part II. of the Schedule are :

- (a) the incorporation in the order of the compulsory hiring regulations made by the M. of A.;
- (b) the determination in the order of the terms and conditions of the hiring, other than rent, and in particular (i.) covenants providing for proper cultivation by the council and compensation for depreciation on the termination of the hiring; (ii.) covenants regulating or restricting the breaking-up of pasture; (iii.) covenants restricting the felling of trees, and the taking of minerals, etc.

The provisions of Part II. of the Schedule as to assessment of compensation are rendered obsolete by the Acquisition of Land (Assessment of Compensation) Act, 1919, sect. 7 (2), which provides that the provisions of the Act of 1919 shall apply to the determination of the amount of rent or compensation payable in respect of land hired compulsorily under the Small Holdings Acts; but the Act of 1919 does not apply to the assessment of compensation on the withdrawal of a notice to treat under sect. 39 (8) of the Act of 1908, noted *infra* (Act of 1926, sect. 17 (3) (a)).

A compulsory hiring order may authorise hiring for a term of not less than fourteen nor more than thirty-five years (1908, sect. 39 (2)).

(e) The Small Holdings and Allotments (Compulsory Hiring) Regulations, 1936 (S.R. & O., 1936, No. 196), prescribe the form of order, method and times of giving notices and publishing, time for objections, notification of confirmation, the procedure for enforcing the order, and as to arbitration following the notice to treat, service of notices, early entry under s. 2 of the Act of 1919, definitions, and limitation of the incorporation in the order (unless expressly so stated) of the Lands Clauses Acts and of ss. 77—85 of the Railway Clauses Act, 1845, to such provisions as are incorporated with adaptations in the regulations. Compulsory hiring orders and the relative regulations do not apply to Crown lands, Duchy of Lancaster land, Duchy of Cornwall land, or to land subject to rights of common.

Where land has been hired compulsorily for small holdings purposes the county council may, by giving to the landlord not more than two years' nor less than one year's written notice before the expiration of the tenancy, renew the tenancy for such term, not being less than fourteen nor more than thirty-five years, as is specified in the notice, on the same terms and conditions (except as to rent) as are contained in the original lease ; and the rent for the further term is determined, in default of agreement, by a valuer appointed by the M. of A. If, on any such notice being given, the landlord proves, to the satisfaction of the Ministry, that any land affected is required for the amenity or convenience of any dwelling-house, such land must be excluded from the renewed tenancy. The right of renewal may be exercised from time to time and is not exhausted by one renewal (1908 Act, sect. 44 (1)). Where a notice has been given under the foregoing sections and it appears to the council that the rent assessed is such as to involve loss to the council, the notice may be withdrawn at any time not less than three months before the expiration of the then current tenancy, on similar terms as to compensation as apply to the withdrawal of a notice to treat under sect. 39 (8) of the Act of 1908 (1926, sect. 18 (1)) ; *semble*, the expiration of the tenancy means the date on which the tenancy would expire under the current lease, assuming compliance with sect. 23 of the Agricultural Holdings Act, 1923, as to holding over on the expiration of a lease.

In assessing the rent for the purposes of sect. 44 (1), *supra*, the valuer shall not take into account any increase in the value of the holding (a) due to improvement in respect of which the council would have been entitled to compensation on quitting the land, or (b) due to any use to which the landlord might have put the land during the renewed term, being a use in respect of which the landlord might resume possession under the Small Holdings Acts, or (c) due to the establishment by the council of other small holdings or allotments in the neighbourhood (1908, sect. 44 (2)).

A landlord may resume possession of the whole or any part of compulsorily hired land, at any time during the tenancy if it is shown to the satisfaction of the M. of A. that the land is required by the landlord for building, mining or other industrial purposes, or for roads necessary therefor ; the landlord must give to the council twelve months' notice, or such shorter notice as is specified in the compulsory hiring order, and where possession is resumed of part only of the land, the rent is reduced as from the date of resumption by such sum as, in default of agreement, may be fixed by a valuer appointed by the Ministry (1908, sect. 46, as amended by 1919, sect. 25, Sched. II.). The operation of sect. 46, *supra*, is limited by sect. 18 (2) of the Act of 1926, which provides that a notice under sect. 46 shall not be valid if given before it has been shown to the satisfaction of the Ministry that the land is required for a purpose mentioned in sect. 46 ; and if the Ministry is not so satisfied, a further application in respect of the same land or any part of it for the same purpose shall not be entertained if made within two years of the previous application.

Where land authorised to be compulsorily hired is subject to a mortgage, any lease made pursuant to the order has effect as if it were a lease authorised by sect. 99 of the Law of Property Act, 1925 (1908 Act, sect. 39 (6)). [578]

Compulsory Acquisition Generally.—An order made under sect. 39 of the Act of 1908 has no effect until confirmed by the M. of A., who

may confirm the order with or without modifications ; a confirmed order becomes final and has effect as if enacted in the Act of 1908 ; and confirmation is conclusive evidence that the requirements of the Act have been complied with, and that the order has been duly made and is within the powers of the Act of 1908 (*ibid.*, sect. 39 (3)) (g). An order under sect. 39 may provide for the creation of new easements or the continuance of existing easements over the land authorised to be acquired ; and if so required by the owner, any such order shall provide for the creation of such new easements as are reasonably necessary to secure the continued use and enjoyment by the owner, and his tenants, of all means of access, drainage, water supply and other similar conveniences theretofore used or enjoyed by them over the land to be acquired. No new easement created by or in pursuance of such order over land hired by a council continues beyond the determination of such hiring. Easements over other land, required for the benefit of the land to be acquired compulsorily, may be acquired by the council either by agreement or by compulsory order. In the Small Holdings Acts, and in the statutes incorporated therewith, the expression "land" includes any right or easement in or over land (1908, sect. 61 (2)).

In determining the amount of compensation payable under a compulsory acquisition order no additional allowance shall be made on account of the purchase or hiring being compulsory (1908, sect. 39 (5)) ; a similar provision also appears in sect. 2 (1) of the Acquisition of Land (Assessment of Compensation) Act, 1919.

By sect. 39 (8) of the Act of 1908 an acquiring council is empowered to withdraw any notice to treat served under a compulsory purchase or hiring order, if after the determination of the amount of compensation (including the rent of land compulsorily hired) it appears to the council that the land cannot be let for small holdings at such a rent as will secure the council from loss. The notice to treat may be withdrawn by notice in writing at any time within six weeks after the determination of compensation, and any person upon whom notice of withdrawal is served shall be entitled to obtain from the council compensation for any loss or expenses which he may have sustained or incurred by reason or in consequence of the notice to treat or of the withdrawal ; and in default of agreement, the amount of compensation is determined by a single arbitrator in accordance with the Agricultural Holdings Act, 1923 (1908, sect. 58 (1), and see sect. 17 (3) of the Act of 1926).

Where on an order for compulsory purchase early entry has been made by the council under sect. 2 (1) of the Land Settlement (Facilities) Act, 1919, the right of withdrawal is lost (see proviso to *ibid.*, sub-sect. (1)).

The compulsory acquisition of land for small holdings purposes is restricted as follows by sect. 41 of the Act of 1908 and sect. 16 of the Act of 1919.

(a) Sect. 41 prohibits the compulsory acquisition of :

(i.) land which at the date of the order forms part of any garden or pleasure ground or is otherwise required for the amenity or convenience of any dwelling-house ;

(ii.) woodland not wholly surrounded by or adjacent to land acquired by the council under the Small Holdings Acts ;

(g) *Certiorari* will not be granted to bring up and quash a confirmed order (*Ex parte Ringer* (1909), 73 J. P. 436). As to the effect on costs of a wilful refusal to convey on the ground that the order might be bad, see *Re Jones and Cardiganshire County Council* (1918), 57 S. J. 374).

- (iii.) land which is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water or other public undertaking;
- (iv.) land which is the site of an ancient monument or other object of archaeological interest.

(b) Sect. 16 (as amended by sect. 21 and First Schedule to the Act of 1926), which modifies sect. 41, prohibits the compulsory acquisition of a holding of fifty acres or less in extent or of an annual value not exceeding £100 for the purposes of income tax, or any part of such holding, where it is shown to the satisfaction of the acquiring council that the holding is the principal means of livelihood of the occupier thereof, unless the occupier, being a tenant, consents to the acquisition; and an order authorising the acquisition of such a holding is not valid unless confirmed by the M. of A. Also land forming part of any park or home farm attached to and usually occupied with a mansion house may be acquired compulsorily only if it is not required for the convenience or amenity of the mansion house, and the order is not valid unless confirmed by the M. of A.

By sect. 41 (2) of the Act of 1908, a council in making, and the M. of A. in confirming, a compulsory acquisition order shall :

- (a) have regard to the extent of land held or occupied in the locality by any owner or tenant, and the convenience of other land in the same ownership or occupation ;
- (b) avoid taking an undue or inconvenient quantity of land from one owner or tenant ;
- (c) where part only of a holding is taken, take into consideration the size and character of the existing agricultural buildings not proposed to be taken which were used in connection with the holding, and the quantity and nature of the land available for occupation therewith ;
- (d) so far as practicable, avoid displacing any considerable number of agricultural labourers or others employed on or about the land.

Sect. 28 of the Act of 1919 prohibits the acquisition for small holdings purposes, except by means of a compulsory purchase order which is provisional only until confirmed by Parliament, of any of the following lands in whole or in part : (a) any metropolitan common within the meaning of the Metropolitan Commons Act, 1866 ; (b) land subject to regulation under an order or scheme under the Inclosure Acts, 1845 to 1899, or under any local Act or otherwise ; (c) land forming part of any town or village green, or dedicated or appropriated as a public park, garden or pleasure ground, or for public recreation.

In dealing with appropriations or compulsory acquisitions of commons the M. of A. must have regard to the same considerations and hold the same inquiries as under the Commons Act, 1876, and any consent to the appropriation of common land for small holdings purposes must be laid before Parliament and may be cancelled by a motion of either House (sect. 28 (2)).

Provision is made for vesting land given in exchange for commons or open spaces (sect. 28 (3)).

Land in category (c), *supra*, cannot be appropriated for small

holdings purposes, and nothing in the Small Holdings Acts authorises the acquisition for small holdings purposes of trust property to which the National Trust Act, 1907, applies (sect. 28 (4)). [579]

Management and Sale.—The primary purpose of the small holdings activities of a council is the sale or letting of holdings to small holders and, in order that a proper record may be kept of the small holdings estate, a council is required to keep a list of the owners and occupiers of small holdings sold or let by the council, and a map or plan showing the size, boundaries and situation of each such holding (Act of 1926, sect. 10). In practice councils also keep lists of unsatisfied applicants for holdings. It is desirable also that full records should be kept of the cropping of all holdings owned by the council, and sufficient records of holdings in the hands of purchasers for the purpose of ensuring that the conditions of sale are observed. In addition to the powers of sale and of letting for small holdings purposes, there are certain specific provisions of the Small Holdings Acts which regulate the management and sale of land acquired for small holdings purposes.

Sect. 19 (2) of the Act of 1926 empowers a county council to sell a small holding to the tenant thereof whose occupation commenced after the commencement of the Act of 1926.

Sect. 5 of the Act of 1926 enacts that where a county council sell a small holding (*i.e.* for occupation as a small holding) the consideration (except where otherwise specifically provided in the Act of 1926) shall be a terminable annuity of an amount equal to the full fair rent of the holding for a period of sixty years or, at the option of the purchaser, a terminable annuity for a period of less than sixty years of an equivalent capital value; “full fair rent” is defined by sect. 2 (6) of the Act of 1926, as the rent which a tenant might reasonably be expected to pay for the holding if let as such and the landlord undertook to bear the cost of structural repairs. The terminable annuity is payable by equal half-yearly instalments, the first instalment being payable on completion, and the balance being secured to the council by a legal charge on the holding; the council may postpone payment of all or any part of the annuity for a term not exceeding five years, in consideration of capital expenditure by the purchaser which increases the capital value of the holding, but on such terms as will, in the opinion of the council, prevent them from incurring any loss or increased loss (*h*). A small holding may be sold subject to such rights of way or other rights as the council may consider necessary or expedient, and (by sect. 11 (1) of the Act of 1919) must be sold subject to a reservation of any minerals vested in the council, except where the M. of A. for any special reason otherwise directs. Any question as to what is the full fair rent of a small holding, or the amount of a terminable annuity, shall be determined by the county council; *semble*, there is no appeal against the decision of the county council.

A special right of purchase is vested in the tenant of a small holding who was in occupation before the commencement of the Act of 1926 (*i*). Sect. 19 (1) of that Act preserves in favour of such tenants the provisions of sect. 11 (3) of the Act of 1919, which enables a tenant who has been in occupation of the holding for a period of not less than six years and who has not received notice to quit, to give to the council one month's

(*h*) Cf. ss. 13, 14 of the Act of 1926, as amended by the Act of 1931 as to advances to purchasers of small holdings (*ante*, p. 342)

(*i*) The Act of 1926 commenced on December 15, 1926.

notice requiring the sale to him of the holding at its then value, exclusive of any increase in value due to any improvement effected by and at the expense of the tenant ; the council is then obliged to sell to the tenant accordingly unless they obtain the consent of the M. of A. to the requirement of the tenant being refused. The value of the holding is to be determined, in default of agreement, by arbitration in accordance with the Second Schedule to the Agricultural Holdings Act, 1923. *Semblé*, a pre-1926 tenant may agree with a council for a sale to him of his holding under sect. 19 (2) of the Act of 1926.

For registration fees on the sale of small holding and on the consequent legal charges to a county council, see the Land Registration Fee Orders, 1930, para. 12 (S.R. & O., 1930, No. 220) and 1939 (S.R. & O., 1939, No. 809).

By sect. 6 of the Act of 1926, a small holding sold by a county council remains subject to the following conditions (*k*) for forty years from the date of sale, and thereafter for so long as the holding remains charged with the terminable annuity :

- (a) any periodical payments due in respect of the terminable annuity shall be duly made ;
- (b) the holding shall not be divided, sold, assigned, let or sub-let without the consent of the county council (*l*) ;
- (c) the holding shall be cultivated by the owner or occupier, as the case may be, in accordance with the rules of good husbandry as defined in the Agricultural Holdings Act, 1923 (vide *ibid.*, sect. 57) and shall not be used for any purpose other than agriculture ;
- (d) not more than one dwelling-house shall be erected on the holding unless, in the opinion of the council, additional accommodation is required for the proper cultivation of the holding ;
- (e) dwelling-houses shall comply with such requirements as the council may impose for securing healthiness and freedom from overcrowding (*m*) ;
- (f) dwelling-houses and other buildings must be kept in repair (*m*) and insured against fire by the owner to the satisfaction of the council ; and receipts for premiums must be produced, if required ;
- (g) no dwelling-house or building shall be used for the sale of intoxicating liquors ;
- (h) where the council consider that no dwelling-house should be erected on a holding, none shall be erected without the consent of the council (*n*).

A council may relax or dispense with all or any of the above conditions either at the time of sale or subsequently, and either with or

(*k*) *Semblé*, these conditions do not apply where a tenant exercises his right to require a sale to himself under s. 11 (3) of the Act of 1919, and s. 19 (1) of the Act of 1926 ; it appears that in such a case the conditions imposed by the repealed s. 12 of the Act of 1908 would apply.

(*l*) This would not, apparently, prevent the raising of money by an equitable mortgage.

(*m*) This does not oust the jurisdiction of local authorities under the P.H.A. and under the Housing Acts.

(*n*) This enables the council to retain holdings as " bare land " holdings where there is a demand for such, and also enables a council to prevent building on unsuitable holdings, such as marsh, or where building would be detrimental to the remainder of the small holdings estate.

without exacting consideration therefor ; the consent of the M. of A. to relaxation or dispensation is necessary in the case of a holding in respect of which a contribution is payable by the M. of A. under sect. 2 of the Act of 1926, and on giving consent the Minister may impose such terms as he thinks fit, including a requirement as to the consideration charged and as to the application thereof in whole or in part in satisfaction of any such contributions payable by him (*ibid.*).

If any of the foregoing conditions are broken the council may, after giving the owner an opportunity of remedying the breach (if it is capable of remedy) either take possession of the holding, or order the sale thereof without taking possession (sect. 6 (2)). Also, if on the decease of the owner, whilst the holding is subject to the conditions of sect. 6, the holding would become sub-divided, the council may require the holding to be sold within twelve months after such decease to some one person, and in default may either take possession or order sale without taking possession (sect. 6 (3)).

A small holding let by a council shall be held subject to the conditions of sect. 6, except as regards the terminable annuity, repairs and insurance ; and on breach of a condition the council may determine the tenancy after giving the tenant an opportunity of remedying a breach capable of remedy (sect. 6 (4)). In practice holdings are usually held under a tenancy agreement which includes the statutory conditions and contains also such other terms as are appropriate to agricultural tenancies in the district, or which are necessary for the proper and orderly management of the small holdings estate, e.g. reserving to the council the cleansing and maintenance of drains and ditches, reserving sporting rights, etc.

~~•~~ By sect. 11 (1) of the Act of 1919, land acquired by a council for small holdings purposes shall, when sold or let for those purposes, be subject to a reservation of all minerals vested in the council unless the M. of A. for any special reason directs otherwise.

Sects. 7 and 8 of the Act of 1926 contain a code governing the recovery of possession of small holdings and the sale thereof. By sect. 7 (1) it is declared that where a council take possession of a small holding under sect. 6 of the Act of 1926, all the estate, right, interest and claim of the owner vests in the council, subject as mentioned in sect. 7 ; and the council may either retain the small holding under their own management or sell or otherwise dispose of it as they think expedient. Where a council so take possession they must pay to the owner either an agreed sum, or a sum equal to the value of the interest in the holding at the disposal of the council, less the amount at which any outstanding annuity may be redeemed under the Law of Property Act, 1925, sect. 191, together with any arrears of the annuity then due ; and the value, in the absence of a sale or in default of agreement, is to be settled by arbitration in accordance with the Agricultural Holdings Act, 1923 (1926 Act, sect. 7 (2)). The sum so payable carries interest at 5 per cent. per annum from the date of taking possession if not paid within three months of that date (sect. 7 (3)). Costs of or incidental to taking possession, sale or other disposal (including any arbitration costs) incurred before the sum payable to the owner has been ascertained may be retained by the council (sect. 7 (4)). The council may recover possession under sects. 188 to 145 of the County Courts Act, 1888 (o),

(o) As to recovery of possession after the commencement of the County Courts Act, 1934, see s. 48, *ibid.*

or under the Small Tenements Recovery Act, 1838, whatever the value of the holding and as though the council were the landlord and the owner of the holding were the tenant (sect. 7 (5)). In the event of the value of the holding being less than the redemption value of the annuity, the council may recover the amount of the deficiency from the owner summarily, as a civil debt (sect. 7 (6)).

Sect. 8 of the Act of 1926 provides that where a council order a sale of a holding without taking possession, they shall cause it to be put up for sale by auction, and retain out of the proceeds the redemption value of the annuity charged on the holding (unless the sale is subject to the annuity) together with arrears of the annuity and costs, and shall pay the balance (if any) to the owner (sect. 8 (1)). If the council cannot sell the holding for such sum as will allow payment of the sums due to the council under sect. 8 (1), they may take possession under sect. 7, but without paying anything to the owner, and recover from him any deficiency summarily as a civil debt (sect. 8 (2)). A sale under sect. 8 may be subject to, or wholly or partly free from the annuity ; and the provisions of the Small Holdings Acts as to purchase money apply as if the sale were the first sale of the holding (sect. 8 (3)).

The Land Registration Act, 1925, sect. 100 (3), entitles a council which has given notice under sect. 12 (4) of the Act of 1908 (now repealed and replaced by sects. 7 and 8 of 1926) to be registered as proprietors of the land on production of evidence of service of the notice and on payment or tender of any sum due to the owner ; see also Rule 120 of the Land Registration (England) Rules, 1925.

General powers of management and sale of lands acquired for small holdings purposes are conferred on county councils by sect. 12 of the Act of 1919, which provides that, subject to the consent of the M. of A. where such consent is required under sect. 12, or under regulations made by the M. of A., a council shall have power in any case where in the opinion of the council it is necessary or expedient so to do for the better carrying into effect of the Small Holdings Acts :

- (a) to erect, repair or improve dwelling-houses or other buildings, or to execute improvements, or to arrange with a tenant to execute improvements on such terms as may be arranged ;
- (b) to sell, mortgage, exchange or let the land or any interest therein, subject in the case of a sale, mortgage or exchange, to the consent of the M. of A. (*p*), and in the case of a mortgage subject also to the consent of the M. of H. ;
- (c) where no power of appropriation is otherwise provided, with the consent of the M. of A. and of the M. of H., and subject to such conditions as to repayment of loan as the M. of H. may impose : (i.) to appropriate for small holdings purposes land held by the council for other purposes, and (ii.) to appropriate for other purposes of the council land acquired for small holdings purposes (*q*) ;
- (d) generally to manage any land acquired for small holdings purposes.

(*p*) But see s. 18 of the Act of 1919, s. 20 of the Act of 1926, and s. 17 and Second Schedule to the Act of 1931 (*infra*).

(*q*) On registration of title to land acquired for small holdings purposes an entry is made in the register of the purposes for which the land is held ; the appropriation should be by deed registered in the land registry.

The last-named power enables a council to farm, in hand, land awaiting adaptation, or awaiting sale or letting. The provisions as to appropriation are not affected by the L.G.A., 1933.

Sect. 12 (3) of the Act of 1919 provides that the provisions of the Lands Clauses (Consolidation) Act, 1845, as to the sale of superfluous land, shall not apply to land acquired by a council for small holdings purposes.

The requirements of sect. 12 of the Act of 1919 as to consent by the M. of A. are modified by sect. 13 of that Act, which negatives the necessity of the consent of the M. of A., after March 31, 1926, to the acquisition, sale, mortgage, exchange, letting, improvement or management of land by a county council under the Act of 1908, except in cases where such consent is required by some enactment other than the principal Act (*r*). Sect. 20 (1) of the Act of 1926 removes the necessity for the consent of the M. of A. to a sale of land acquired under Part I. of the Act of 1926 without the consent of the Minister, but by sect. 20 (2) it is provided that sect. 13 of the Act of 1919 shall not exempt any council from obtaining the consent of the Minister in any case where such consent is required by the Act of 1926 (*s*). The position is clarified by sect. 17 and the Second Schedule of the Act of 1931, which adds to sect. 2 of the Act of 1926 a new sub-sect. (7), providing that land in respect of which a contribution has been made or undertaken to be made by the M. of A. under sect. 2 shall not be sold, mortgaged, exchanged, let or appropriated for any purpose other than the provision of small holdings except with the consent of the M. of A. who may give such consent either unconditionally or subject to such conditions as he thinks fit.

* The right of a small holdings tenant to compensation for improvements is enlarged by sect. 47 of the Act of 1908. Sub-sect. (1) gives to a small holdings tenant a right to compensation, as against the council, for the market-garden improvements mentioned in Part I. of the Second Schedule to the Act of 1908 (which is identical with the Third Schedule to the Agricultural Holdings Act, 1923, except that the Act of 1908 does not include erection or enlargement of buildings), even though the holding has not been let as a market garden. The right may be barred by an express prohibition in writing of the improvements ; but the tenant may appeal to the M. of A. against such prohibition, and the decision of the Minister is final (*ibid.*). A tenant may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him, and any toolhouse, shed, greenhouse, fowl-house or pig-sty built or acquired by him in respect of which he has no claim for compensation (sect. 47 (4)).

In practice it is usual to plant suitable holdings with fruit trees or bushes under a special agreement with the tenant, whereby he undertakes to pay an additional rent in respect of the trees, to manage in accordance with the directions of the county land agent, and to leave them without compensation on quitting the holding ; by this means the orderly and systematic planting of the estate, control of pests, and periodical removal and replacement of out-worn trees and bushes can be secured.

(*r*) As the Acts of 1908, 1919, 1926 and 1931, are to be construed as one, this reference to the principal Act, which originally included the Acts of 1908 and 1919 only, now appears to be a reference to all four Acts.

(*s*) E.g. on a sale to a co-operative society under s. 3 of the Act of 1926 or on a sale free from some or all of the conditions of s. 6, *ibid.*

Apart from the special provisions of sect. 47, the position of a small holdings tenant with regard to compensation for improvements, for disturbance, for unexhausted manures and for other matters normally the subject of compensation on quitting a holding, is governed by the Agricultural Holdings Act, 1923, and by custom. [580]

Co-operative Societies.—Sect. 49 (1) of the Act of 1908 empowers a county, borough or U.D.C. (*t*) to promote the formation or extension of societies on a co-operative basis, having as an object the provision or the profitable working of small holdings (*u*), and within the limitations of the section may assist such societies, and may employ as its agents any society having as an object the promotion of co-operation in connection with the cultivation of small holdings. The same councils may make grants or advances to a society or guarantee advances made by a society, upon such terms and conditions as to interest and repayment or otherwise and on such security as the council think fit; such advances being subject to the consent of the M. of H. and to regulations made by him. A council may also let to a society accommodation for the storage or sale of goods (Act of 1926, sect. 21, Sched. I.).

The M. of A. may exercise the powers of a county council with respect to societies in relation to small holdings provided by the M. of A. (Act of 1908, sect. 49 (3)), and, with the consent of the Treasury, may make grants out of the Small Holdings and Allotments Account to any society having as an object the promotion of co-operation in connection with the cultivation of small holdings (*ibid.*, sect. 49 (4)).

By sect. 3 (1) of the Act of 1926 a county council is empowered to sell or let one or more small holdings to a number of persons working on a co-operative system, provided the system is approved by the council; and by sect. 3 (2) a county council may, with the consent of the M. of A., sell or let one or more small holdings to any association formed for the purpose of creating or promoting the creation of small holdings, and so constituted that the division of profits amongst the members of the association is prohibited or restricted (*a*).

The term "society" includes any body of persons whether incorporated or unincorporated (*b*). [581]

Finance.—Sect. 51 (1) of the Act of 1908 provided for the continuance of the Small Holdings Account opened at the Bank of England under the Small Holdings and Allotments Act, 1907; this account is now known as the Small Holdings and Allotments Account (Act of 1931, sect. 17 (2)). There shall be paid into this account (a) such money as may from time to time be provided by Parliament towards the expenses of the M. of A. under the Small Holdings Acts, and (b) all sums received by the M. of A. and directed by the Small Holdings Acts to be paid into this account (sect. 51 (2)); the costs and expenses of the M. of A. directed by the Small Holdings Acts to be paid out of this account shall be paid out of the money standing to the credit of the account. Accounts of the receipts and expenditure of the Small Holdings and

(*t*) Borough and urban district councils were included by s. 25 and the Second Schedule of the Act of 1919.

(*u*) This may be in relation to the purchase of requisites, the sale of produce, credit banking, insurance or otherwise.

(*a*) See the rules made by the M. of A.; interest at 5 per cent. on capital expenditure may be paid to the general account of the society.

(*b*) Act of 1931, s. 20 (1); this definition applies to all the Acts construed as one with the Act of 1931, as to which see *ibid.*, s. 20 (2).

Allotments Account are to be made up annually and laid before Parliament, and operations on the account are regulated by Treasury directions.

The accounts of local authorities are governed by sect. 54 of the Act of 1908, which provides that separate accounts shall be kept of the receipts and expenditure of a council under the Small Holdings Acts, and any such receipts shall, subject to the provisions of the Acts, be applicable to small holdings or allotments purposes (c), but not for any other purpose except with the consent of the M. of H.

The small holdings accounts of a council are subject to M. of H. audit under Part X. of the L.G.A., 1933, in the same manner as other accounts of the council; but in the case of a county borough council Part X. applies only when adopted by resolution of the council under sect. 239 of the L.G.A., 1933, or otherwise specially applied. [582]

Borrowing.—The provisions of the Small Holdings Acts as to borrowing are materially amended by the L.G.A., 1933. The small holdings purposes for which a county council may borrow are: (i.) the provisions of the Small Holdings Acts relating to small holdings, and for the purpose of making grants or advances to co-operative societies (Act of 1908, sect. 52 (1) as amended by the L.G.A., 1933); (ii.) the redemption of annuities payable in respect of the purchase of land for small holdings (Act of 1919, sect. 9 (3)); (iii.) the making of advances and fulfilment of guarantees for the equipment of small holdings (Act of 1926, sect. 14 (4)).

The Public Works Loan Commissioners are authorised by sect. 52 (2) of the Act of 1908, to lend, in manner provided by the Public Works Loans Act, 1875, any money which a county council may borrow for the foregoing purposes, subject to the following provisos: (i.) a loan shall be at the minimum rate allowed for the time being for loans out of the local loans fund; (ii.) on the recommendation of the M. of H. the loan period may exceed the period permitted under the Act of 1875 (as amended), but may not exceed the period recommended by the M. of H., nor, for the purchase of land (or the defrayment of the expense of borrowing for that purpose (d)), eighty years, or in any other case, fifty years. The period of eighty years for acquisition of land is preserved by sect. 198 and the Eighth Schedule to the L.G.A., 1933; (iii.) as between loans for different periods, the longer duration of the loan shall not be taken as a reason for fixing a higher rate of interest.

Councils are not obliged to borrow from the Commissioners, and in practice they can frequently obtain better terms in the open market.

Capital money received by a county council as purchase money for land sold or in repayment of advances must be applied, with the sanction of the M. of H. either in repayment of debt or for any other purpose for which capital money may be applied.

Special provisions as to the issue by the Treasury to the Public Works Loan Commissioners of funds for the making of advances to councils, and as to advances to councils, are contained in sects. 14, 15 of the Act of 1919; these provisions do not affect loans made after April 1, 1926.

(c) Some difficulty may be experienced in carrying out this provision when the outstanding loans in connection with the acquisition of the small holdings estates are paid off, and the rent-roll is no longer burdened with loan charges.

(d) The words in brackets are added by s. 17 and the Second Schedule of the Act of 1931.

Subject to the special provisions noted, *supra*, the borrowing powers of councils for small holdings purposes are regulated by Part IX. of the L.G.A., 1933. [583]

London.—The Small Holdings and Allotments Acts, 1908–1931 (e), apply to London. No special reference to London is made in the Acts in relation to small holdings except in the Land Settlement (Facilities) Act, 1919, sect. 22 (f), of which provides that the power of appropriation of lands applies to the L.C.C. and metropolitan borough councils. The Sailors and Soldiers (Gifts for Land Settlement) Act, 1916 (g), applies. The power under Part III. of the M. of A. & F. Act, 1919 (h), as to appointment of county agricultural committees is permissive as regards London. Sects. 7 and 8 (i) make further modifications as regards the matters to be referred to the committee and the appointment of members. No such committee has been appointed in London. [584]

(e) See 24 Halsbury's Statutes 66.

(f) 1 Halsbury's Statutes 294.

(g) 17 Halsbury's Statutes 534.

(h) 3 Halsbury's Statutes 451.

(i) *Ibid.*, 453, 454.

SMALLPOX

See INFECTIOUS DISEASES.

SMELTING WORKS

See OFFENSIVE TRADES.

SMOKE ABATEMENT

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*See also titles : CHIMNEYS ;
NUISANCES SUMMARILY ABATABLE UNDER
PUBLIC HEALTH ACTS.*

The law relating to smoke nuisances is contained in the P.H.A., 1936; and in addition there are a number of miscellaneous provisions relating to smoke included in other statutes. As to the abatement of nuisances generally, see title **NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH ACTS (a)**.

Definition of Smoke Nuisances.—Any installation for the combustion of fuel which is used in any manufacturing or trade process, or for working engines by steam, and which does not so far as practicable prevent the emission of smoke to the atmosphere, and any chimney (not being the chimney of a private house) emitting smoke in such quantity as to be a nuisance, are "statutory nuisances" under the P.H.A., 1936, sect. 92 (b), being referred to as "smoke nuisances" (sect. 101) (c).

The term "smoke" includes soot, ash, grit and gritty particles ; and the term "chimney" includes structures and openings of any kind from or through which smoke may be emitted (sect. 110) (d).

(a) *Failure to Prevent the Emission of Smoke to the Atmosphere.*—It is a good defence in proceedings under the Act for an offence in respect of an installation for the combustion of fuel, above referred to, for the defendant to prove that the installation complained of embodies the best practicable means of preventing smoke and that it has been properly attended to by the person having charge thereof (sect. 103 (2)) (e). In determining whether the best practicable means have been taken for preventing or for counteracting the effect of a smoke

(a) Vol. IX., p. 398.

(c) *Ibid.*, 400.

(e) *Ibid.*, 401.

(b) 29 Halsbury's Statutes 394.

(d) *Ibid.*, 406.

nuisance, the court must have regard to cost and to local conditions and circumstances (f). Under somewhat similar provisions in the P.H. (Scotland) Act, 1867, it was held that the section was designed to deal with a badly constructed furnace or one continually misused, and not a furnace which on isolated occasions failed to consume its own smoke (g). In a further case (h), it was held that an absence of smoke prevention devices such as mechanical or underfeed stokers was not evidence in itself of a nuisance within the meaning of sect. 16 (9), P.H. (Scotland) Act, 1897 (i). In a case under a local improvement Act, which provided for an offence being committed by the owner or occupier, or by a foreman or workman in charge of the plant, it was held that where a servant without the knowledge of the owner, negligently used the furnaces so that the smoke was not consumed, the servant only could be convicted and not the owner (k). A similar decision was given in a case (l) taken under the repealed Smoke Abatement (London) Act, 1853. This Act contained a proviso that no offence should be committed if the furnace consumed "as far as possible" its own smoke; and it was held that those words meant as far as was possible consistent with carrying out the trade in which the furnace was employed (m).

(b) *Any Chimney (not being the Chimney of a Private House) Emitting Smoke in such Quantity as to be a Nuisance.*—The expression "house" means a dwelling-house (P.H.A., 1936 s. 343 (n)), so that this provision applies to chimneys (as defined in sect. 110, *supra*), connected with any class of building other than a private dwelling-house. It has been held (o) that a large building let in residential flats is not a private dwelling-house. Similarly, a west-end club is not a private dwelling-house (p).

Where proceedings are taken under the Act, in respect of the emission of smoke, *other than black smoke*, in such quantity as to be a nuisance, it is a good defence to prove that the best practicable means have been taken to prevent the nuisance; and the expression "best practicable means" has reference not only to the provision and efficient maintenance of adequate and proper plant for preventing the creation and emission of smoke, but also to the manner in which that plant is used (sect. 103 (3)) (q). This defence is not available where the emission of *black smoke* occurs in such quantity as to be a nuisance, the offence in this case being complete without any consideration of the construction of the furnace (r).

Where a local authority have adopted bye-laws regulating the emission of smoke of such colour, density or content as may be prescribed therein, in accordance with sect. 104 (s), the emission of smoke of the

(f) P.H.A., 1936, s. 110 (2); 29 Halsbury's Statutes 406.

(g) *Dumfries Local Authority v. Murphy* (1884), 11 Ct. of Sess. Cas. (4th Ser.) 694; 36 Digest 184, e.

(h) *Leith JJ. v. Jas. Bertram and Son*, [1915] S. C. 1133; 36 Digest 184, f.

(i) 60 & 61 Vict. c. 38.

(k) *Wilcocks v. Sands* (1868), 32 J. P. 565; 36 Digest 183, 275.

(l) *Chisholm v. Doulton* (1889), 22 Q. B. D. 736; 36 Digest 183, 277; distinguished in *Armitage, Ltd. v. Nicholson*, [1913] W. N. 116.

(m) *Cooper v. Woolley* (1867), L. R. 2 Ex. 88; 36 Digest 184, 281.

(n) 29 Halsbury's Statutes 537.

(o) *Queen Anne Mansions v. Westminster Corpn.* (1901), 46 Sol. Jo. 70.

(p) *McNair v. Baker*, [1904] 1 K. B. 208; 36 Digest 181, 261.

(q) 29 Halsbury's Statutes 401.

(r) *Weekes v. King* (1885), 49 J. P. 709; 36 Digest 181, 257.

(s) 29 Halsbury's Statutes 402; and see *post*, p. 364.

character so prescribed for such period as may be specified in the bye-laws, is, until the contrary is proved, deemed to be a statutory nuisance and a smoke nuisance (sect. 103 (4)) (t).

It will be seen therefore that, (1) the "best practicable means" defence is only available in proceedings for the emission of smoke from a chimney, where the smoke is *not black* smoke; where black smoke is emitted, this defence is not available; and (2) where bye-laws have been adopted regulating the emission of smoke of specified colour, density or content, and such smoke is emitted for the prescribed period, the onus of proof is removed from the local authority to the person charged, and the defendant has to prove that a nuisance has not been created. Where bye-laws have not been adopted, it is for the prosecution to prove that a nuisance has been committed in each individual case.

Where black smoke was emitted in such quantity as to be a nuisance under the Nuisances Removal Acts, and no evidence was given to show that any inquiry was made as to who had charge of the furnaces, it was held that the owners were rightly summoned, as they were responsible for the acts of their servants (u). (Sect. 102 (a) provides for the giving of notice of the existence of a smoke nuisance to the occupier.) In a case under P.H.A., 1875, sect. 91 (b), the owner of a mill was summoned in respect of a nuisance caused by inefficient stoking and the justices dismissed the case but were held to be wrong in holding that the owner was not liable (c). Where proceedings were taken in respect of the emission of smoke from several chimneys on the same premises, the summons was objected to on the grounds that it ought to have indicated from which of the chimneys the smoke was said to issue, and the justices allowed the objection, but it was held that they were wrong and ought to have heard the evidence and made an order in respect of one or more of the chimneys (d). It has been held that smoke may be a nuisance although not injurious to health (e); nor is it necessary to prove that any person or property is injuriously affected by it (f).

[585]

Smoke Observations.—Every local authority is required to cause their district to be inspected from time to time with a view to the detection of statutory nuisances (P.H.A., 1936, sect. 91) (g); and in order that smoke nuisances may be discovered, it is necessary that regular observations of works chimneys be taken. Smoke observations are usually taken by the sanitary inspector, who may be specially qualified as a smoke inspector (see title SANITARY INSPECTOR) (h), and are generally carried out for a period of thirty minutes, during which the chimney should be kept under continual observation and the colour and density of the smoke, and the exact period of its emission, in minutes or portion of a minute should be accurately recorded. The result of the observation is obtained by adding together the periods of emission of the different classes of smoke—dense black smoke, dense smoke other than black,

(t) 29 Halsbury's Statutes 401.

(u) *Barnes v. Ackroyd* (1872), L. R. 7 Q. B. 474; 36 Digest 183, 276.

(a) 29 Halsbury's Statutes 400; and see *post*, p. 364.

(b) 13 Halsbury's Statutes 661 (repealed).

(c) *Niven v. Greeves* (1890), 54 J. P. 548; 36 Digest 183, 278.

(d) *Barnes v. Norris* (1876), 41 J. P. 150; 36 Digest 181, 256.

(e) *Gaskell v. Bayley* (1874), 38 J. P. 805; 36 Digest 183, 273.

(f) *South London Electric Supply Corp. v. Perrin*, [1901] 2 K. B. 186; 36 Digest 183, 274.

(g) 29 Halsbury's Statutes 394.

(h) *Ante*, p. 81.

moderate smoke, so as to ascertain the aggregate emission of smoke of each class during the period of observation. In taking a smoke observation, the inspector should be approximately 100 yards away, in a position which gives him an unobstructed view of the chimney. The position should not be such that the sun is immediately behind the smoke, as this will tend to reduce the apparent density of the smoke.

There is no definition of "black smoke"; but generally speaking the term is considered to mean smoke which appears black in colour, and is of such density that light cannot penetrate through it, so that the top of the chimney is not properly distinguishable from the smoke.

Upon the completion of a smoke observation, the result of which shows that a nuisance has been committed, the inspector is required to notify the occupier of the premises immediately, and if such notice is not in writing, it must be confirmed in writing within twenty-four hours (sect. 102) (i). [586]

Bye-Laws Relating to Smoke Nuisances.—A local authority may, and if required by the M. of H. must, make bye-laws regulating the emission of smoke of such colour, density or content as may be prescribed by the bye-laws (sect. 104 (1)) (k). Bye-laws made under these provisions usually prescribe that the emission of *black* smoke for a period of either two or three minutes in the aggregate within any continuous period of thirty minutes from any one chimney in a building shall, until the contrary is proved, constitute a nuisance. Building bye-laws (l) may require the provision in new buildings, other than private houses, of such arrangements for heating or cooking as are calculated to prevent or reduce the emission of smoke (sect. 104 (2)) (m). As to the making of bye-laws, see title **BYE-LAWS**. [587]

Procedure with Respect to Smoke Nuisances.—Where a smoke nuisance is found to exist on any premises it may be dealt with as in the case of any other statutory nuisance (sect. 103 (1)) (n), the procedure involving the service of an abatement notice (sect. 93) (o), and the making of a "nuisance order" by a court of summary jurisdiction (sect. 94, (p)). Upon conviction for non-compliance with an abatement notice, the court may impose a fine not exceeding fifty pounds; and for contravention of a nuisance order the court may impose a fine not exceeding ten pounds and a further fine not exceeding five pounds for each day on which the offence continues after conviction therefor (sect. 103 (5)) (q). As to the abatement of nuisances generally, see title **NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH ACTS** (r).

It has been held that separate informations may be laid in respect of each day during which the order of the court is not obeyed, and upon conviction separate penalties may be imposed (s). As a general rule, an abatement notice must state the nature of the works which the local authority require to be carried out to abate the nuisance (t); but it

(i) 29 Halsbury's Statutes 400.

(k) *Ibid.*, 402.

(l) Defined, s. 348; 29 Halsbury's Statutes 537; and see ss. 61—71; 29 Halsbury's Statutes 372—381.

(m) 29 Halsbury's Statutes 402.

(n) *Ibid.*, 401.

(o) *Ibid.*, 396.

(p) *Ibid.*.

(q) *Ibid.*, 401.

(r) Vol. IX., p. 398.

(s) *R. v. Waterhouse* (1872), L. R. 7 Q. B. 545; 36 Digest 180, 255.

(t) *R. v. Wheatley* (1885), 16 Q. B. D. 34; 26 Digest 236, 756.

has been held that in the case of a nuisance arising from the emission of black smoke from a factory chimney it is not necessary to do so (*u*).

Where a person is aggrieved by a decision of a court of summary jurisdiction, an appeal may be made to a court of quarter sessions (*a*). See title APPEALS TO THE COURTS (*b*).

Where a nuisance affects their district, but arises outside it, a local authority are empowered to take similar action as in the case of a nuisance arising in their area, provided that proceedings may only be taken before a court having jurisdiction in the place where the act or default is alleged to be committed or take place (sect. 98 (1)) (*c*). Action may be taken by a local authority bordering upon London, where the nuisance arises in London (sect. 98 (2)) (*c*). Similarly, a metropolitan borough council may take proceedings where a nuisance, affecting their district, arises outside the metropolitan area (*d*). [588]

Exemptions from Provisions Relating to Smoke Nuisances.—Nothing in the P.H.A., 1936, relating to nuisances, including smoke nuisances, extends to a mine of any description so as to interfere with, or obstruct the efficient working of, the mine; or to the smelting of ores and minerals, to the calcining, puddling and rolling of iron and other metals, to the conversion of pig iron into wrought iron, or to the reheating, annealing, hardening, forging, converting and carburising of iron and other metals, so as to interfere with or obstruct any of those processes (sect. 109 (1)) (*e*). The exemption in respect of mines and the metallurgical processes detailed above, only extends so as not to interfere with the efficient working of the mine or process, and it is not an absolute exemption. Under the corresponding provisions of the P.H.A., 1875 (*f*), it was held that the provisions relating to smoke nuisances applied to the chimney of a coal mine, unless it could be proved that the smoke could not be prevented without interfering with the efficient working of the mine (*g*). It should be noted that P.H.A., 1936, sect. 109, *supra*, does not exempt mines from proceedings in respect of a public nuisance brought by the Attorney-General, nor from the ordinary common law liability respecting damage to property (*h*). The M. of H. may by order extend the above exemption so as to apply to other industrial processes specified in the order, or exclude from the operation of sect. 109, *supra*, any of the processes detailed above (sect. 109 (2)) (*i*). [589]

Smoke from Special Premises or Property. (a) *Crown Property*.—Where a local authority are satisfied that a smoke nuisance occurs on premises used by the Crown, they must report the matter to the appropriate Government department. If the responsible Minister is satisfied, after due inquiry, that a nuisance exists, he must cause the

(*u*) *Millard v. Wastall*, [1898] 1 Q. B. 842; 36 Digest 282, 725; and see *Central London Rail. Co. v. Hammersmith Borough Council* (1904), 73 L. J. (K. B.) 623; 36 Digest 237, 760.

(*a*) P.H.A., 1936, s. 301; 29 Halsbury's Statutes 515.

(*b*) Vol. I., p. 320.

(*c*) 29 Halsbury's Statutes 399.

(*d*) P.H. (London) Act, 1936, s. 282 and Sched. V., clause 22; 30 Halsbury's Statutes 592, 619.

(*e*) 29 Halsbury's Statutes 406.

(*f*) S. 91; 18 Halsbury's Statutes 661 (repealed).

(*g*) *Patterson v. Chamber Colliery Co.* (1892), 56 J. P. 200; 36 Digest 182, 269.

(*h*) *A.-G. v. Logan*, [1891] 2 Q. B. 100; 36 Digest 182, 263.

(*i*) 29 Halsbury's Statutes 406.

necessary steps to be taken to abate the nuisance and to prevent a recurrence thereof (sect. 106) (*k*). It should be noted that once having satisfied themselves that a nuisance exists and due notification having been forwarded to the appropriate Government department, the question as to what action, if any, should be taken rests entirely with the Minister concerned, and if he fails to do anything in the matter, on the ground that a nuisance is not being committed, the local authority cannot take any further steps. When an inspector becomes aware of the existence of a smoke nuisance on Crown property, as a result of the taking of a smoke observation, it will be necessary for him forthwith to report the matter to the person in charge of the premises and to confirm the notice in writing within twenty-four hours (*l*). [590]

(b) *Railway Locomotives.*—Every locomotive steam engine, used on the railway must, if it uses coal or other similar fuel emitting smoke, be constructed on the principle of consuming, and so as to consume, its own smoke, and if any engine is not so constructed the company or person using it is liable to a penalty of five pounds for every day during which the engine is used on the railway (*m*). An offence is committed under the above provisions in the case of a locomotive which does not consume its own smoke as far as practicable, although it is properly constructed to do so, where the failure is due to the fault of the company or of any servant in their employ (*n*). It has been held that in spite of the legislature having authorised the construction of the railway, the railway company were not entitled to use engines which emitted smoke contrary to the provisions of sect. 114, *supra* (*o*). In a further case (*p*), black smoke was emitted for more than three minutes on several occasions and evidence was given that only smoky coal was used. The Divisional Court upheld a conviction under the sections above quoted, on the ground that there was evidence that black smoke had been unnecessarily caused, and although no evidence was given to show that the locomotive was not constructed so as to consume its own smoke, the company gave no explanation of the emission of the smoke. In another case, where it was proved that the smoke was not emitted through any fault in stoking or management of the engine, and the fuel used was good hard bituminous steam coal, normally used in some districts, it was held that the engine had not failed to consume its own smoke within the meaning of the Acts (*q*). Considerable nuisance not infrequently arises as a result of smoke from railway engines, especially those engaged in shunting operations in sidings; but great care is necessary before taking action against a railway company, because it is not easy to prove either that the engine is not properly constructed, or that, although so constructed, it has failed to consume its own smoke.

Under the Railway Fires Act, 1905, sect. 2 (*r*), a railway company are empowered to take action with a view to extinguishing, or preventing the spread of, fire caused by sparks or cinders emitted from a locomotive

(*k*) 29 Halsbury's Statutes 402.

(*l*) S. 102; *ante*, p. 364.

(*m*) Railways Clauses Consolidation Act, 1845, s. 114; 14 Halsbury's Statutes 74.

(*n*) Regulation of Railways Act, 1868, s. 19; *ibid.*, 181.

(*o*) *Smith v. Midland Rail. Co.* (1877), 26 W. R. 10; 38 Digest 43, 250.

(*p*) *South Eastern & Chatham Rail. Co. v. L.C.C.* (1901), 65 J. P. 568; 38 Digest 304, 309.

(*q*) *L.C.C. v. Great Eastern Rail. Co.*, [1906] 2 K. B. 312; 38 Digest 304, 308.

(*r*) 1 Halsbury's Statutes 68.

engine, and they may enter land and cut down any undergrowth, etc. Trees, bushes or shrubs may be cut down, but only with the consent of the owner. Full compensation must be paid to any person injuriously affected by the exercise of these powers.

(c) *Road Vehicles*.—Under the Road Traffic Act, 1930, sect. 30 (s), the M. of T. has made Regulations governing, *inter alia*, the consumption of smoke and the emission of visible vapour, sparks, ashes and grit, by road vehicles (t). Legal proceedings for offences against the Regulations are taken by the police authorities under the Summary Jurisdiction Acts (u).

(d) *Ships*.—The provisions of the P.H.A., 1936, relating to smoke nuisances, are applied to any vessel as if it were a house, building or premises, and as if the master or other officer in charge of the vessel were the occupier; provided that such provisions do not apply in relation to any vessel habitually used as a sea-going vessel, except that a funnel of, or chimney on, any such ship sending forth black smoke in such quantity as to be a nuisance, is a statutory nuisance (sect. 267) (x). Vessels under the command or charge of an officer holding His Majesty's commission or any vessel belonging to a foreign government, are exempted entirely from the provisions of the Act of 1936, including those relating to smoke nuisances (sect. 267 (5)) (x). [591]

Investigation of Problems Relating to Smoke.—A local authority is empowered to undertake investigations regarding atmospheric pollution and research, and to contribute towards the cost of such work carried out by other bodies, subject to such conditions or restrictions as may by regulations be prescribed by the Minister of Health (sect. 105) (a); but so far no such regulations have been made. Records relating to atmospheric pollution usually include the amount of soot deposited, amount of sulphur gases in air, and measurement of dust particles. The records obtained by local authorities are collected by the Atmospheric Pollution Advisory Committee of the Department of Scientific and Industrial Research, who lay down standard conditions for the taking of observations and records, and the results are published annually. [592]

Chimneys on Fire.—In districts to which the Town Police Clauses Act, 1847, applies every person who *wilfully* sets or causes to be set on fire any chimney is guilty of an offence and liable to a penalty not exceeding five pounds (b); and where any chimney is fired accidentally, the person occupying or using the premises is liable to a penalty of ten shillings, provided that a penalty is not incurred if it is proved that the fire was in no wise owing to omission, neglect or carelessness of himself or his servant (c). Proceedings in respect of chimney firing are usually taken by the police authorities. [593]

London.—The P.H. (London) Act, 1936, sect. 147 (d) (which repeals and replaces, *inter alia*, the provisions of the P.H. (Smoke Abatement) Act, 1926, so far as concerns London), contains provisions requiring furnaces and steam vessels to consume their own smoke; provisions

(s) 23 Halsbury's Statutes 633.

(t) Motor Vehicles (Construction and Use) Regulations, 1937 (S. R. & O., 1937, No. 229).

(u) Road Traffic Act, 1930, s. 113; 23 Halsbury's Statutes 633.

(x) 29 Halsbury's Statutes 492.

(a) *Ibid.*, 402.

(b) Town Police Clauses Act, 1847, s. 30; 13 Halsbury's Statutes 603. He is not exempt from indictment for felony (*ibid.*).

(c) *Ibid.*, s. 31; 13 Halsbury's Statutes 603.

(d) 30 Halsbury's Statutes 528.

are enforced by sanitary authorities, but the L.C.C., on the request of a sanitary authority, may take proceedings in lieu ; as regards the Port of London, proceedings are taken by the Port Health Authority (City Corporation). Trade furnaces, etc., which do not consume their own smoke, any chimney (other than those of private dwelling-houses and sea-going ships) sending forth smoke in such quantity as to be a nuisance, and sea-going ships sending forth black smoke in such quantity as to be a nuisance, are nuisances which may be dealt with summarily under the Act (sect. 148) (e). Under sect. 149 (f), the L.C.C. may enforce the above-mentioned provisions in relation to premises belonging to a sanitary authority (not being premises within the Port of London). Under sect. 150 (g), notice of a smoke nuisance (other than from sea-going ships) must be given to the occupier in writing. By sect. 151 (h), the L.C.C., the City Corporation and the Port Health Authority within their respective jurisdiction may, and if so required by the M. of H., shall, make bye-laws as to smoke. Under sect. 152 (i), local authorities must furnish such information to the Minister as he may require as to proceedings with regard to abatement ; and under sect. 153 (k) sanitary authorities may undertake research into atmospheric pollution and smoke nuisances, and the L.C.C. may spend up to £500 a year in making experiments. Sect. 154 (l) contains special provisions as to nuisance arising from Crown property.

The Road Traffic Act, 1930, sect. 30 (m), the Railways Clauses Consolidation Act, 1845, sect. 114 (n), and the Regulation of Railways Act, 1868, sect. 19 (o), apply to London. The Port of London (Various Powers) Act, 1932, sect. 18 (p), contains a prohibition as to smoke from refuse dumps near the River Thames. See title REFUSE. [594]

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| (e) 30 Halsbury's Statutes 580. | (f) <i>Ibid.</i> , 531. |
| (g) <i>Ibid.</i> | (h) <i>Ibid.</i> |
| (i) <i>Ibid.</i> , 532. | (k) <i>Ibid.</i> |
| (l) <i>Ibid.</i> | |
| (m) 23 Halsbury's Statutes 633 ; see <i>ante</i> , p. 367. | |
| (n) 14 Halsbury's Statutes 74 ; see <i>ante</i> , p. 366. | |
| (o) <i>Ibid.</i> , 181 ; see <i>ante</i> , p. 366. | |
| (p) 25 Halsbury's Statutes 789. | |

SNOW CLEARANCE

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See also titles :

BYELAWS ;
GOOD RULE AND GOVERNMENT ;

HIGHWAY NUISANCES ;
NUISANCES.

Removal of Highway Obstruction Caused by Snow.—If any impediment or obstruction arises in any highways from an accumulation of snow, it must be removed from time to time by the local authority,

and within twenty-four hours after notice thereof from any justice of the peace of the county in which the parish is situate (a). [595]

Bye-Laws for the Prevention of Nuisances from Snow.—A local authority (b) may make bye-laws for preventing the occurrence of nuisances from snow, filth, dust, ashes and rubbish (c). [596]

Sliding on Snow in Street.—To make or use any slide on ice or snow in any street (e) to the obstruction or annoyance (f) or danger of the residents or passengers (g) in any borough or urban district is an offence for which the penalty is a fine not exceeding forty shillings or, in the discretion of the justice (h), imprisonment for not exceeding fourteen days (i).

A constable or other officer duly authorised is empowered to take into custody without warrant any person who within his view commits such offence (i). [597]

London.—The Highway Act, 1835, sect. 26 (k), applies to London (except the City (l)), and the case law on the interpretation of this Act and as to the Common Law liability of a highway authority to abate public nuisances caused by snow is applicable to London. Sect. 84 of the P.H. (London) Act, 1936 (m), requires sanitary authorities to make bye-laws for, *inter alia*, the prevention of nuisances arising from snow, ice and other matters, but no such bye-laws have for many years been confirmed by the Local Government Board or M. of H. Sect. 61 (n) of the same Act provides that the provisions of the Act as to placing

(a) Highway Act, 1835, s. 26 ; 9 Halsbury's Statutes 63. For form of notice, see s. 118 and Schedule, Form No. 8 ; *ibid.*, 112 and 115. A local authority are not liable for injuries sustained by a person as a result of a failure to clear snow (*Saunders v. Holborn District Board of Works*, [1895] 1 Q. B. 64 ; 26 Digest 413, 1325) ; see also *Acton District Council v. London United Tramways*, [1909] 1 K. B. 68 ; 26 Digest 439, 1563, as to removal of snow from highway by Tramway Co.

(b) This means the council of any borough, urban or rural district, s. 1 (2), P.H.A., 1936 ; 29 Halsbury's Statutes 322.

(c) *Ibid.*, s. 81 ; 29 Halsbury's Statutes 387. This power is reproduced from the P.H.A., 1875, s. 44 (13 Halsbury's Statutes 644), as extended to rural districts by S.R. & O., 1931 (24 Halsbury's Statutes 262). Model bye-laws were issued under s. 44, and re-issued for use under the present section in June 1937. In *R. v. Rose* (1855), 24 L. J. 103 ; 38 Digest 155, 49, it was decided that a power to make bye-laws for removal of dust, filth, etc., from streets by occupiers did not authorise the making of a bye-law for removal of pure snow, but as snow is specifically mentioned this would not apply to a bye-law made under this section. The model bye-laws have, however, for many years omitted a clause under this branch of the section, it being the view of the M. of H. that such a bye-law is not practicable enforceable, or reasonable at the present day.

(e) "Street" includes any road, square, court, alley or thoroughfare or public passage, Town Police Clauses Act, 1847, s. 3 ; 19 Halsbury's Statutes 35.

(f) Obstruction, annoyance or danger must be proved (*Stinson v. Browning* (1866), 35 L. J. (M. C.) 152 ; 26 Digest 436, 1537), but it is not necessary to call any person who was annoyed as a witness (*Woolley v. Corbishley* (1860), 24 J. P. 773 ; 26 Digest 422, 1409).

(g) A conviction must specify which class of offence has been committed (*Cotterill v. Lempiere* (1890), 24 Q. B. D. 634 ; 38 Digest 167, 122).

(h) Where the provisions of the section are in force under the P.H.A., 1875, s. 171, the conviction must be by two justices (ss. 251 and 316). If the case is heard by one justice the fine must not exceed 20s. : Summary Jurisdiction Act, 1879, s. 26 (7).

(i) Town Police Clauses Act, 1847, s. 28 ; 19 Halsbury's Statutes 38 ; P.H.A., 1875, s. 171 ; 18 Halsbury's Statutes 696. These provisions may also have been put in force by a local Act.

(k) 9 Halsbury's Statutes 63.

(l) Highway Act, 1835, s. 115 ; *ibid.*, 112.

(m) 30 Halsbury's Statutes 491 ; but see note (p), p. 370.

(n) *Ibid.*, 478.

refuse, etc., in sewers shall not prevent a borough council from placing snow in any sewer vested in them so long as obstruction is prevented and solid matter does not pass into the L.C.C. sewers. Snow is included in the definition of street refuse under sect. 304 of the Act (*o*), and must by s. 86 (*p*) be removed (and the streets swept) by the sanitary authority (*q*). See title SCAVENGING. [598]

(*o*) 30 Halsbury's Statutes, 602.

(*p*) *Ibid.*, 492.

(*q*) This in effect renders the bye-law making power superfluous: cf. note (*c*), p. 369.

SOCIAL SERVICES (*a*)

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What are the Public Social Services : the Official Return.—The term "public social services" is commonly used in two senses—in a broad sense to cover the wide range of personal services rendered by public authorities, central and local, up and down the country; in a narrower sense, to embrace only those which are included in the return issued by the Government each year. The remarks which follow will be restricted chiefly to the latter, which include all the most important of the services. I should explain that by personal services are meant those which are rendered directly to the person, such as education or medical treatment, in contrast to those rendered indirectly, as by provision of houses (though this is in fact included in the Government return) or sewerage schemes: the distinction between the two is by no means always clear, and indeed the early official return included sewerage and sewage disposal, the collection and disposal of refuse and the provision of open spaces and of baths and washhouses: the term is sometimes used to cover even a wider field. I have examined the public social services at some length in a paper to the Royal Statistical Society (Vol. C., Part IV., 1937), and here I must restrict myself to the most important aspects which call for comment.

We owe the official return, first issued in 1920, to the persistence of a number of men who were disturbed at the large amount of public assistance which was being given in one form or another, and it is often referred to as the Drage return, after the man who was largely instrumental in obtaining its issue. It is instructive to note that in the year 1919–1920 (1918–1919 for some of the local authority services for which the figures in the return are always a year behind) the expenditure covered was under £214 m. (millions), for 1934–1935 almost twice as much, just under £427 m., which at any rate shows that the return has not frightened the electorate, despite its mounting millions. To appreciate the significance of this rise, account must be taken of matters to which later reference will be made.

(*a*) This article is not a legal article as are the other titles in this encyclopædia and must necessarily reflect the views of the distinguished contributor, Sir I. Gwilym Gibbon, who was formerly Director, Local Government Division, M. of H. It has not been under review by the Editors and Editorial Board.

The return serves a useful purpose by bringing together, and giving the figures for, the several services, but it is defective in several respects. It excludes services which certainly should be included : for example, welfare of the blind, though pensions to blind persons are included under old age pensions ; various forms of helping the unemployed besides unemployment insurance and unemployment assistance, such as training or reconditioning, some would even say Employment Exchanges ; the new midwifery service should obviously be included. The return also is too bare, only figures with some explanations being given. It should certainly be kept brief, but some crisp informative comment should be added ; there should be some butter to the bread, you cannot expect many beyond a few avid statisticians to take an interest in bare figures. Further, the return mixes up different classes of services without grouping them according to their significance. The services in the return may broadly be divided into two principal classes, the maintenance and the general (or communal) services, even though the boundaries between the two are dim in places. The maintenance services, using the term in a broad sense, include—public assistance, old age pensions and contributory pensions, unemployment insurance and unemployment allowances, national health insurance and housing. The general services include education and approved schools (the latter for children under special discipline), hospitals for infectious disease, maternity and child welfare and the treatment of the mentally diseased or the mentally deficient. It will be seen what a mixed bag are the services included in the return and how much is omitted which is of the same kind as one or more of the services admitted. [599]

Expansion of the Social Services.—The first big fact which stands out is the enormous expansion of the services and of the expenditure in them. Thus in 1910-1911, the total expenditure on the services provided was but £55 m., to us a very modest sum, but by no means so to the then generation ; by 1934-1935, £427 m. (in 1935-1936, £441 m.). The fact is that since the beginning of the present century the country has been undergoing a revolution in social and individual outlook of the first order, we have passed over a watershed into a new country. The change has been gradual, it had been steadily developing long before then, but it is only in these latter years that its results have become markedly, even dramatically, noticeable : it has, fortunately, been evolutionary in form, though revolutionary in effect, and its pace has been accelerated by the war and its aftermath.

New social services have been added, and old ones increased and in some measure transformed. Of the new services, the first to appear were the old age pensions, long advocated on a contributory basis but finally provided on a non-contributory, with a means test ; then came the Labour (Employment) Exchanges, soon followed by unemployment insurance, confined at first to a few selected industries and later extended and now covering nearly all manual industries and services except that domestic service has not yet been brought within the net. At the same time national health insurance was instituted, this also later extended but comparatively little because it was widely spread right from the outset. Measures for the treatment of the tuberculous were adopted at the same time, first in connection with health insurance but later as part of public health, and subsequently measures for dealing with venereal diseases. Much more important still were the steps taken to stimulate activities for maternity and child welfare by the

local authorities, extending and later largely replacing admirable pioneering efforts which had been made by voluntary societies but unavoidably on an inadequate scale. After the war, came contributory pensions, which included the maximum rate of old age pension for insured persons and their wives at age sixty-five years, regardless of means, and, most significant of all, unemployment allowances (under various names) for insured persons who had exhausted their unemployment benefit, now extended also to other unemployed persons and brought under the administration of the Central Unemployment Assistance Board. Some other new services have also been added and, since the passing of the L.G.A., 1929, a steady transfer has taken place from the poor law of certain services, in particular hospital treatment of the sick, to other branches of local government work.

All this development indicates, as previously stated, a radical change of outlook. These various services, new and expanded old, are regarded as measures which must be rendered by the community, in whole or in part at the cost of the community, for the well-being not only of the individual but also of the community itself. This is largely true even of the old poor law, the new public assistance, in the work which now remains to it, work which is still large and important, for future welfare not less than for present relief. It is now primarily a residual service for meeting needs for which provision is not available in any of the other governmental services, and meeting them with little or none of the "less eligible" safeguard of the old poor law, except for the incorrigible and even for them often but in weak solution. [600]

Classes of Services.—Of the services classed above as "maintenance" it is necessary to distinguish those which are given, in varying measure, according to need without contribution and those which are provided as a matter of right in return for contributions, the State-aided insurance schemes. These latter were innovations of the first decade of the century, though the system had been long advocated, chiefly for old age pensions. The schemes introduced three new principles into our social structure: (1) compulsory insurance for all workers within the classes covered; (2) compulsory contributions from the insured; and (3) also from employers. The systems, too, involved a departure from ordinary insurance principles because all risks were accepted on a common basis of contribution, without regard to their possible very different burdens on the insurance funds, with these qualifications, however: (1) that there was a limit to the amount of benefit which could be received, in unemployment insurance a limit depending on the number of contributions which had been paid; in health insurance the limit was only for sickness pay, with invalidity pay, at a reduced level, without limit; (2) in health insurance there was a selective element because the insurance was chiefly (as it turned out almost wholly) undertaken by societies and members could choose their own societies, and a residual pool of "deposit contributors," as they were called, was provided for those among others who could not be accepted by the societies, and was managed by the State. In practice, this special provision for bad risks has proved little necessary, and the societies have been willing to take them with the others.

This pooling of risks does, however, raise some awkward questions, particularly in unemployment insurance, where they are most in evidence. There are enormous differences between industries and between persons in the same industry in the risk of unemployment. How far

are the more steady industries and the more steady workers being in effect taxed for the maintenance of the less steady? Again, how far are employers and workmen in certain industries of very fluctuating employment being encouraged not to make any great efforts for steadier employment by the fact that to some extent they are able to live on the backs of their steadier brethren? It is well known that at times there have been astute practices to make the best of both worlds, fluctuating employment and unemployment benefit, and it is not in the interests of the community to encourage devices of this nature or to provide palliatives which reduce the pressure on employers or workmen to lessen unsteadiness of employment.

Looking now at the non-contributory maintenance services, we find that in all of them there is a means test, though applied in different ways. In old age pensions, there are certain limits of income laid down by law which may disentitle a person to a pension or may reduce the amount of pension from the maximum of 10s. a week to as little as 1s., but the person aged seventy years or over is entitled to the amount of pension fixed by the law for the several levels of means; the person insured under the contributory pensions scheme is entitled to the full pension at age sixty-five, without regard to means, and so is his wife at the same age (b). Moreover, important concessions have been made for pension purposes in counting the "means" of those who are not insured, income up to £39 a year being ignored if derived from savings or voluntary allowances, with the result that a man and his wife, if both are aged seventy, may have an income between them of over 50s. a week, including the old age pension. This principle of ignoring up to specified limits certain kinds of means (such as sickness and unemployment benefit and war pension) has also been applied to public assistance, so that persons may actually admit that they have sufficient from these sources for their needs but nevertheless can successfully claim, and have done so, that the authority must relieve them as though they were without means—a queer consequence!

In unemployment allowances and in public assistance, what is given to those in need is decided after taking into account the means available, but with this difference, that in the latter payments may be claimed either from the recipient, when assistance is given on loan, or from liable relatives. Repayment, in whole or part, according to means may also be claimed for school meals and for general hospital treatment, but usually in both cases, the former particularly, a generous attitude is taken in deciding on repayments. In housing, too, though to a less extent, there are in effect means tests, firstly and generally, because subsidised housing has been intended only for members of the working classes whose means are such that some financial aid is required to provide them with decent accommodation; secondly, because rent for accommodation for persons displaced by slum clearances have in some measure to be adjusted to their means, and, thirdly, because a number of authorities have availed themselves of powers in the later Acts to charge different rents for the same kind of dwellings according to the circumstances of the tenants or to allow rebates of rents. These social attitudes and policies raise some interesting questions, but within the space at my disposal, I must pass to other aspects of the social services.

(b) The Old Age and Widows' Pensions Act, 1940 (3 & 4 Geo. 6, c. 13), entitles an insured woman or the wife of an insured man, if he has reached the age of sixty-five, to a pension at age sixty.

But before doing so it is instructive to compare the expenditures on the social services. In 1934-1935, the list was topped by education, with nearly £92 m.; next came unemployment insurance and allowances, with nearly £85 m., £47 m. for the former, £38 m. for the latter; the next in order, ranging from £43 m. to £33 m. were poor relief, housing, contributory pensions, old age pensions and national health insurance; and after these, with a big drop to about £12½ m., came hospitals and the treatment of disease.

More interesting still is the proportion of the total expenditure met from public funds. The whole cost was so met for non-contributory old age pensions and unemployment allowances, and nearly the whole cost (a small amount being received in fees or the like or in other payment for services) of public assistance, hospital treatment, education and provision for the mentally deficient. For the other services the percentages provided from central funds run as follows (the list, with a small modification, is taken from my paper to the Royal Statistical Society):

80 per cent. to 90 per cent.—Approved schools, maternity and child welfare.
70 ,, 80 ,, Mental treatment.
40 ,, 50 ,, Housing, contributory pensions.
30 ,, 40 ,, Unemployment insurance.
10 ,, 20 ,, Health insurance.

The small proportion for health insurance compared with unemployment insurance and contributory pensions is noteworthy. [601]

Central and Local Services.—One significant consequence of the development of social services in recent years is the great change in the respective parts played by the central and the local governments. At the beginning of the century all the then "public social services" were carried out by the local authorities, except some of the what are now called "approved schools," a small item; there was some central supervision but not much in detail except in education and in the poor law. Now, what a change! Omitting education and housing, in both of which the State largely calls the tune through its grants, and public assistance, all the services with heavy expenditure are carried out either by the State (as in unemployment insurance and allowances, contributory pensions and old age pensions, though here the local authorities have a small part to play) or by bodies other than local authorities under the supervision of the State, as in national health insurance. All this is a big and very significant shift in administration, dramatised in recent years by the setting up of the Central Unemployment Assistance Board, whose travails, and quite possibly later its doings, signally illustrate the dangers of centralisation, even if it should be unavoidable, and the Board might not have been necessary at all had headquarters taken sterner measures to deal with local authorities who would not play the game—but played their own game with some cunning.

The shift in administration is also strikingly illustrated by finance. In 1934-1935, omitting war pensions which are an incongruous item in the return, the total receipts for the public social services came to a little under £400 m. Of this sum no less than £194 m. was spent on services with the management of which local authorities have nothing or very little to do.

The position is still more striking if we consider the amount of the

total receipts derived from public funds. Of the nearly £400 m., £271 m. came from public funds, of which no less than £169 m. were contributed from central, and £102 m. from local, funds, the latter being made up of rates and block grants. These block grants are, of course, derived from State funds, and in 1934-1935 and the preceding year ranged around 23 per cent. of the total revenue from rates and block grants. It may, therefore, be estimated that of the above total of £271 m. over £190 m. in all came from central, and under £80 m. from local, sources. In the public social services of the beginning of the century, education was the only one for which a substantial grant was paid by the State.

What is the significance of this trend towards a much larger participation of the State in the social services, in administration and in finance? It is in part a consequence, first of the closer connection between the different parts of the country making it desirable to render for the whole country services of a kind which might formerly have been dealt with separately for the several localities; the country has in effect shrunk, in inter-relations though not in miles. It is also largely due to the fact that many of the newer social services need to be treated in national, not local, units; you could not, for instance, expediently try unemployment insurance separately for each town though some continental countries originally approached the problem in this way. The trend has been largely influenced, too, by the fact that it is only from national taxation, with its much larger diversity of sources and its elasticity, that the necessary means for this enormous increase in public expenditure can be obtained; local rates provide altogether too restricted a source of revenue and, moreover, very great differences in the levels of rates in different localities and in the local resources have compelled measures for reducing these differences by regulated distribution of larger grants from central funds.

Those who delight to bark at bureaucracy will find abundant opportunities for their pastime in these developments. The more administration is concentrated in the State, inevitably the larger the proportion which falls into the hands of officials. Not that there need be less control of policy, which is the essential note of democracy, indeed it may well in effect be greater; and still less any reduction in administrative efficiency. The principal dangers come from other quarters—less diffusion of political and administrative experience through the community, with consequent more risk of ill-considered demands from the electorate; a tendency after a time towards too stereotyped administration, the “cake of custom” as Bagehot termed it in another connection; mistakes, when made, are on a bigger and more harmful scale, and there is less flexibility to adjust practice to proved experience; on the whole also, when discipline has to be exercised it is less likely to be exercised thoroughly by a central department than by local authorities other than at times of crisis, though there will be exceptions; not least are the dangers of electoral bribery on a national, not a local scale, a stupendous danger for a democratic community. Those who have followed the history of the social services in recent years will know that these dangers are by no means academic, and that they have not always been resisted, the last included, the gravest of all. [602]

The Insurance Schemes.—The two big insurance schemes which are State-aided, the one for unemployment, the other for sickness, show marked contrast in the scheme of management, the former being administered almost wholly by the State, the latter almost entirely

through self-governing, or supposedly self-governing societies, though with central supervision. The contributory pensions insurance is also centrally managed, but that is much more routine in administration; without the personal judgment which is constantly demanded in the other two. These contrasting systems were adopted not on merits but of expediency. In unemployment insurance it was intended to make liberal use of the trade unions, many of which already had simple forms of unemployment benefit, but these expectations have not been fulfilled. In health insurance, it was necessary to permit administration through societies to make sure of the support needed for the passage of the measure.

Theoretically, central management should provide the better system, as it does the cheaper, at any rate in immediate cost. There are many shortcomings in the society system, some of them absurd, and the self-government by members on which it is supposed to be based is largely a farce. Yet we have the fact that, under the strain of the depression the unemployment scheme broke badly, so badly that it could be mended only after a crisis had supervened and stern surgery had been applied, while the health scheme held tight. True that the strain on the latter was small compared with that on the former, but it is open to question whether it would have held so well had it been entirely under State management. The societies, with their officers and their practical experience, acted as a buffer between the State and wild demands. It is not without reason and only after bitter experience that in unemployment insurance the Government have now provided a buffer between demands and the Government and Parliament in the form of a Statutory Committee, with the duty of periodically reviewing the state of the unemployment insurance fund and to report to the Government and to Parliament on the solvency of the fund and what new measures, if any, are necessary to keep it solvent or what concessions, if any, can be made, and the further obligation on the Government to inform Parliament of the reason if recommendations are not accepted. [603]

Results of the Social Services.—What are the results of the social services and of the vast expenditure which is being incurred? It is very difficult to say. I have stated elsewhere that there is no definite evidence that health insurance has improved the general health of the country: its principal purpose, of course, was not this but to heal the sick, yet some general improvement might have been expected, at any rate by those who do not know the pitfalls by the way. There is no question of the better medical service now rendered than before insurance; but there have been disconcerting increases in sickness and, still more, in disability rates. It may be that the insured are more "sickness-conscious"; it is likely also that the will to resist disease is reduced in many cases, "valetudinarism," as I termed it many years ago. Disconcerting also is the continuance of the huge consumption of medicine in England and Wales, the "bottle habit," in marked contrast with Scotland.

As to unemployment insurance and unemployment allowances, there is little doubt that without them the situation might have become very dangerous at times in the difficult years following the war, but they were safety valves bought at great cost, in money and in deterioration of morale, and some of the latter still continues. There has been fear or reluctance to apply stern remedies to ills which are well known.

Indeed, this difficulty of adequately applying disciplinary measures

in cases of abuse, except when they become flagrant and sometimes not even then—using “abuse” to cover not only positive abuses but also the passive, possibly due to the decline of the will to work—is one of the most critical throughout the maintenance social services. We have certainly not yet found any adequate substitute for that automatic discipline which comes from suffering or from members who know each other and had a clear financial motive for seeing that their fellows did not take undue advantages, and a democratic regime will ultimately almost surely break unless needed discipline be exercised. Most men are decent, but there are a number who through weakness or kinks easily fall, and if they fall with impunity drag with them many other of the weaker brethren.

In the foregoing remarks I have dealt only with the two principal insurance services and unemployment allowances; they indicate best, with public assistance, some of the dangers along the path which the country is following, and will continue to follow because there is no going back in the present period.

One other matter should be added. There is far more need of research into the social services, particularly into the results which they produce. It is really amazing how we are content to go on and to extend blindly, faith that the results must necessarily be good. On the contrary, the results are certainly a mixture of good and ill. As an elementary business precaution and, more important, for vital reasons of morale and of national and individual well-being, the State should see that systematic research is made into these matters and should stimulate and aid it, pay for the whole of it if need be, but research which is genuinely independent, free from bias of government or party. In their social services, the governments, central and local, are carrying on a business beyond compare bigger than any other single business in the country, and they simply cannot afford to continue carrying them on without ascertaining much more and much better than at present what is really happening, not only on the surface, but deeper down where lie the roots of prosperity and well-being, or of decay. [604]

SOLICITATION

See OFFENSIVE BEHAVIOUR.

SPECIAL CONSTABLES

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*See also titles : POLICE ;
STANDING JOINT COMMITTEE ;
WATCH COMMITTEE.*

Introduction.—Under the Special Constables Act, 1881, special constables were appointed by two or more justices of the peace in cases

where tumult, riot or felony had taken place, or may have been reasonably apprehended.

Until the passing of the Special Constables Act, 1914, special constables were appointed in times of emergency, but that Act enabled them to be appointed during the War. [605]

Principal Statutes.—By the Special Constables Act, 1923, the Act of 1914 was made permanent and special constables are now a recognised part of the police force.

The principal statutes relating to special constables are the Special Constables Acts, 1831, 1914 and 1923. In addition to these statutes, there is the Special Constables Order, 1923 (S.R. & O., 1923, No. 905), made under the powers conferred by the Act of 1914, as amended by the Act of 1923.

The Special Constables Act, 1831, provides for the nomination and appointment of special constables in times of emergency in counties or towns having a separate commission of the peace or in any liberty, franchise, city or town in England and Wales.

The Municipal Corporations Act of 1882 makes provision for their appointment in a borough in October of each year.

The Special Constables Act of 1923 provides for the nomination and appointment of a permanent special constabulary for a county or borough police force, and empowers two or more justices to appoint special constables at the request of the chief officer of police or an officer not below the rank of inspector, whether or not an emergency has arisen.

The Special Constables Act of 1923 provides that any two justices may appoint such persons as may be nominated by the Admiralty, Army Council or Air Council to act as special constables in dockyards, principal stations of the War Department, aerodromes, etc. within the metropolitan police Area. Special constables appointed under this provision are controlled exclusively by the Admiralty, Army Council or Air Council, as the case may be, who have power to terminate their appointment.

The police authorities for the purpose of special constables are the Secretary of State for the Metropolitan Police District; the common council of the City of London for the City of London; the Standing Joint Committee for a county and the Watch Committee for a borough having a separate police force. [606]

Enlistment.—No person may be appointed a special constable until he has reached the age of twenty years (Special Constables Order, 1923, Art. 1), and may resign his office subject to any notice required by Regulations in force made by the police authority, provided that if he has undertaken to serve for a definite period, his resignation shall be subject to the consent of the chief officer of police (Special Constables Order, 1923, Art. 9).

The Secretary of State may, on representations made by the justices, direct that special constables be sworn in, notwithstanding the fact that they are exempted from service as a constable, but they shall only be liable to act for two months (Special Constables Act, 1831, sect. 2). The Secretary of State may also direct H.M. Lieutenant of the county to cause special constables to be appointed whether exempted or not, but they shall only be called on to act for three months (Special Constables Act, 1831, sect. 3).

Two or more justices may appoint special constables by a precept under their hands and administer the prescribed declaration (Special Constables Act, 1831, sect. 4).

Notice of such appointment shall be given by the justices to the Secretary of State and to H.M. Lieutenant of the county (Special Constables Act, 1831, sect. 1).

The Parish Constables Act of 1842, sect. 6, provides that certain persons are exempt from service as constables, and by sect. 7 of the same Act others are disqualified from serving.

A special constable is appointed for the police district for which the justices making the appointment act, but he may act in an adjoining police district (Special Constables Order, 1923, Art. 4). Persons willing to act as special constables may be appointed irrespective of whether they reside in the place or neighbourhood (Special Constables Act, 1831, sect. 1).

All expenses, equipment and maintenance of special constables is paid out of the police fund with the approval of the police authority (Special Constables Order, 1923, Art. 12). [607]

Powers, Employment, etc.—A special constable may only be appointed or employed for the preservation of the public peace, the protection of the inhabitants and the security of property in the police district for which the justices making the appointment act (Special Constables Order, 1923, Art. 2), but he shall have all the powers, privileges and duties in his own police district and also in any adjoining district which a constable has under Statute or Common Law (Special Constables Order, 1923, Art. 4).

A special constable appointed in any part of the metropolitan police district or in the City of London has all the powers of a constable throughout the whole of the metropolitan police district and the City of London (Police Act, 1890, sect. 28 (2)).

Special constables may act in an adjoining county at the request of the justices of that county or by order of the justices of their own county (Special Constables Act, 1831, sect. 6). [608]

Discipline.—Special constables are under the direction and control of the Chief Officer of Police of the police district for which they are appointed, except in special circumstances when the Secretary of State may designate another authority (Special Constables Order, 1923, Art. 5).

The police authority may make regulations fixing the conditions of appointment, resignation and discharge of special constables (Special Constables Order, 1923, Art. 6).

The Chief Officer of Police may, at his discretion, determine the service of, or suspend or dismiss any special constable (Special Constables Order, 1923, Art. 10).

A person appointed as a special constable if when called on to serve neglects or refuses to serve, is liable on conviction to a fine not exceeding £5 unless prevented by sickness or accident (Special Constables Act, 1831, sect. 7).

If a special constable refuses to make the declaration when required by the justices, he is liable to a fine of £5. [609]

Expenses.—A police authority may reimburse a special constable for out-of-pocket expenses incurred in the execution of his duty, or make an allowance in lieu. They may also make an allowance in consideration

of wages lost while required for duty or while incapacitated from following his employment by an injury received in the execution of his duty without his own default, but the allowance shall not exceed 10s. per day (Special Constables Order, 1923, Art. 7).

Any other allowance may be made provided it is approved by the Secretary of State, but no allowance may be made to a person voluntarily appointed as a special constable, in respect of his services as such. Any such allowance shall be paid out of the police fund (Special Constables Order, 1923, Art. 7).

The chief constable in a county or borough may withhold an allowance to a special constable. In a borough the decision of the chief constable is subject to the approval of the Watch Committee (Special Constables Order, 1923, Art. 7). [610]

Pensions and Allowances.—A special constable is entitled to a pension if incapacitated through injury received in the execution of his duty without his own default. If he dies from the effect of any such injury or illness his widow shall be entitled to a pension or gratuity and his children entitled to allowances.

These pensions, gratuities or allowances are at the same rates and subject to the same conditions, as nearly as possible, to those applicable to an ordinary constable and his wife and children under the Police Pensions Act, 1921, calculated on the following basis :

- (a) The period of approved service shall be reckoned as one completed year if he has served less than three years. If his service exceeds three years the period of approved service shall be reckoned as follows :

No. of completed years since his last appointment.	Total period of approved service.
3}	2
4}	
5}	3
6}	
7}	4
8}	
9 up to }	
20 or more}	10

- (b) The pay is to be reckoned at the rate of 70s. weekly with an addition of 1s. weekly for each completed year since his last appointment up to a maximum of 90s. per week (Special Constables Order, 1923, Art. 11). [611]

London.—See London note to title POLICE.



SPECIAL COUNTY PURPOSES

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Introductory.—The expenses of county councils are divided into two classes : expenses for “ general county purposes,” which for the most part are incurred in respect of the county as a whole and to which the whole county is liable to contribute, and expenses for “ special county purposes,” which are chargeable on part of the county only (a).

The expression “ special county purposes ” is defined in sect. 180 (1) (b) of the L.G.A., 1933 (b), as “ any purposes for expenditure on which part only of the county is chargeable, whether by reason of any part of the county being exempt therefrom or otherwise.” Sect. 180 (1) (a) excepts from general county purposes those purposes which are made special county purposes *by or under* any enactment or statutory order. The inclusion of the word “ under ” is of importance because, although an enactment may not expressly declare matters to be special county purposes, the county council may be given power to declare them so to be in particular cases.

The definition in the Act contains the word “ chargeable.” It probably does not, therefore, include cases where the county council have power to incur and pay expenses as expenses for general county purposes and to recover them later from a district council or other body (c). **[612]**

Types of Expenses for Special County Purposes.—The following are matters to which the definition in the Act applies. Unless otherwise stated, the expenses will of course be for special county purposes only if the county contains areas which are exempt from county contribution to the expenses in question.

(a) It is probable that s. 75 of the L.G.A., 1933, does not apply to precepts in respect of expenditure for special county purposes. This section provides that a county councillor may not vote on any matter involving only expenditure on account of which the county district which he represents is not liable to be charged. As the issue of precepts does not involve only expenditure it may be assumed that any member of the council may vote.

(b) 26 Halsbury's Statutes 404.

(c) E.g. under the Small Holdings and Allotments Act, 1908, s. 53 (2), a district or parish council is, in certain circumstances, to repay expenses incurred by the county council under the Act.

Advertisements.—A county council may not raise any sum on account of their expenses under the Advertisements Regulation Act, 1907 (*d*), within any borough, or within any urban district containing a population according to the last census for the time being of over 10,000 (sects. 4 and 7 (4)), or within any urban district to which the county council has delegated its powers under the Act (*e*). [613]

Diseases of Animals.—Boroughs which had separate quarter sessions before the L.G.A., 1888, and had a population of 10,000 or over according to the census of 1881, are exempt from county contributions in respect of expenses incurred under the Diseases of Animals Act, 1894. Other boroughs which are Diseases of Animals Authorities are entitled to a refund of the proportionate amount paid by them towards the expenses of the county council (*f*). [614]

Education.—A county council may not raise any sum on account of any expenses incurred by them for the purposes of elementary education within any borough or urban district the council of which is the local education authority for that purpose (*g*). For the purpose of elementary education, a borough council is a local education authority if the borough had a population of over 10,000 according to the census of 1901. An U.D.C. is a local education authority if the urban district had a population of over 20,000 according to that census (*h*). The county council may, if they think fit, charge any expenses incurred by them for the purposes of higher education upon any parish or parishes which in their opinion are served by the school or college in connection with which the expenses have been incurred; provided that reasonable notice is given to the rating authority, or in rural parishes to the chairman of the parish council, or if there is no council to the chairman of the parish meeting; and provided also that the council of any borough or urban district which is a local elementary education authority for the area in question is consulted (*i*). A county council may also charge such portion as they think fit (not being more than three-fourths) of any expenses incurred by them in respect of capital expenditure or rent, on account of the provision or improvement of any public elementary school, or in providing means of conveyance for teachers or children attending the school, on the parish or parishes which in the opinion of the council are served by the school (*k*). A county council may raise a similar portion of any expenses incurred to meet the liabilities on account of loans or rent of any school board transferred to them under the Education Act, 1902, exclusively within the area which formed the school district in respect of which the liability was incurred, so far as it is within their area (*l*).

None of the above provisions apply to the L.C.C. of which all expenses incurred under the Act are paid out of the county fund (*m*). [615]

Explosives.—Boroughs which had separate quarter sessions before the L.G.A., 1888, and had a population of 10,000 or over according to the census of 1881, or whose council has been made the local authority

(*d*) 13 Halsbury's Statutes 908.

(*e*) Advertisements Regulation Act, 1925, s. 2; *ibid.*, 1114.

(*f*) Diseases of Animals Act, 1894, ss. 3, 41; 1 Halsbury's Statutes 392, 411; L.G.A., 1888, ss. 35, 39; 10 Halsbury's Statutes 713, 717.

(*g*) Education Act, 1921, . 122 (1) (b); 7 Halsbury's Statutes 195.

(*h*) *Ibid.*, s. 8 (b) and (c); *ibid.*, 131.

(*i*) *Ibid.*, s. 122 (1) (a); *ibid.*, 195.

(*k*) *Ibid.*, s. 122 (1) (c); *ibid.*

(*l*) *Ibid.*, s. 122 (1) (d); *ibid.*

(*m*) *Ibid.*, s. 122 (1); *ibid.*

for the purposes of the Explosives Act, 1875, by order of the Secretary of State, are exempt from county contributions in respect of expenses incurred under the latter Act (n). [616]

Fabrics.—Under sect. 5 (3) of the Fabrics (Misdescription) Act, 1913 (o), expenses incurred under the Act are to be defrayed, in the case of a county council, as expenses for special county purposes. [617].

Fishery Harbours.—Where a county council with the consent of and subject to regulations made by the M. of H., contribute or undertake to contribute to the expenses of a harbour authority constituted under the Fishery Harbours Act, 1915, the expenses so incurred are, if the Minister's consent so provides, to be defrayed as expenses for special county purposes, charged on such part of the county as may be specified in such consent (p). [618].

Food and Drugs.—Under sect. 75 (3) of the Food and Drugs Act, 1938, expenses incurred by a county council as a Food and Drugs Authority are, if the council are not the Food and Drugs Authority for the whole county, to be defrayed as expenses for special county purposes charged on those county districts the councils of which are not Food and Drugs Authorities (q).

The county council are the Food and Drugs Authority in their county except as respects any non-county borough or urban district which has according to the last published census for the time being a population of 40,000 or upwards (r). [619].

Gas.—The Gas Undertakings Act, 1934, sect. 29 (2), provides that, subject to sub-sect. (1) of that section, expenses incurred under the Gas Undertakings Acts, 1920 to 1932 (s), by a county council shall be defrayed as payments for special county purposes chargeable on those parts of the county for which the council have power, or would have power if they did not themselves supply gas to the public, to appoint a gas examiner. [620].

Hospitals.—Where a county council have pursuant to sect. 185 of the P.H.A., 1936 (t), prepared a scheme for the provision of adequate hospital accommodation for the treatment of persons suffering from infectious disease within the county, the scheme may provide for any expenses incurred by the council for the purposes of the scheme being defrayed as expenses for special county purposes chargeable on a part only of the county (u). In addition to the foregoing it is provided by sect. 186 that a county council may direct that the expenses incurred by them in providing hospital accommodation for persons suffering from infectious disease, whether defrayable as expenses for general county purposes or for special county purposes, shall be assessed on the parishes liable to contribute thereto in proportion to the use made of that accommodation by persons in those parishes respectively (a). [621].

(n) L.G.A., 1888, s. 35; 10 Halsbury's Statutes 713; Explosives Act, 1875, s. 68; 8 Halsbury's Statutes 424.

(o) 12 Halsbury's Statutes 952.

(p) Fishery Harbours Act, 1915, s. 3 (1) (a); 18 Halsbury's Statutes 583.

(q) Food and Drugs Act, 1938, s. 75 (3); 31 Halsbury's Statutes 299.

(r) *Ibid.*, s. 64; *ibid.*, 292.

(s) 27 Halsbury's Statutes 325.

(t) 29 Halsbury's Statutes 450.

(u) P.H.A., 1936, s. 185 (3) (a); *ibid.*, 451.

(a) 29 Halsbury's Statutes 452. For infectious diseases, see also *infra*.

Housing.—Any expenses incurred in the execution of the Housing Act, 1936, by a county council other than the L.C.C. shall be defrayed as expenses either for general county purposes or for special county purposes as the case may require (b). This provision does not, however, apply to expenses incurred in making advances and guarantees for the purpose of increasing housing accommodation under sect. 91 of the Act (c), nor to expenses incurred in promoting or assisting housing associations under sect. 98 (d). The expenses incurred by a county council pursuant to such sections are to be defrayed as expenses for general county purposes.¹

Where the council of a county district have been declared by the M. of H. to be a local authority for the purposes of the Housing (Rural Workers) Act, 1926, the expenses of the county council under that Act are to be treated as special county purposes restricted to so much of the administrative county as is not comprised in the county district, and no sum may be raised by the county council in that district on account of their expenses under the Act (e). [622]

Infectious Diseases.—Any expenses incurred by a county council in respect of the prevention and treatment of infectious diseases under sect. 143 of the P.H.A., 1936, must be defrayed, if the M. of H. so directs by order, as expenses for special county purposes charged on such part of the county as may be provided by the order. Any such order may, however, be varied or revoked by a subsequent order (f). [623]

Justice.—Where a quarter sessions borough, containing a population of 10,000 or over according to the census of 1881, was, on August 18, 1888, wholly or partly exempt from contributing towards costs incurred for any purposes for which the quarter sessions of the county are authorised to incur costs, such borough shall not be assessed by the county council to county contributions in respect of costs incurred for any such purpose, nor, in the case of partial exemption, be assessed for any larger sum than such as will give effect to that exemption (g). This exemption does not, however, extend to costs incurred for the purpose of any powers, duties or liabilities of the justices of the borough which are transferred to the county council (h), nor to any costs of or incidental to the assizes of the county; all of these and the costs of sessions being general county purposes.

Any of the above exemptions may be terminated by agreement between the county and borough councils (i). [624]

Libraries.—The Public Libraries Act, 1919, sect. 4 (2) (k), provides that any expenses incurred by a county council under the Public Libraries Acts shall be defrayed out of the county fund, and the council may, if they think fit, after giving reasonable notice to the chairman

(b) Housing Act, 1936, s. 116 (2); 29 Halsbury's Statutes 649.

(c) *Ibid.*, s. 91 (6); *ibid.*, 638.

(d) *Ibid.*, s. 98 (4); *ibid.*, 636.

(e) Housing (Rural Workers) Act, 1926, s. 5 (3); 18 Halsbury's Statutes 1168.

(f) P.H.A., 1936, s. 143 (6); 29 Halsbury's Statutes 428. See also under "Hospitals," *supra*.

(g) L.G.A., 1888, s. 35 (2); 10 Halsbury's Statutes 713.

(h) See licensing of places for stage plays and powers under the Explosives Act, 1875; 8 Halsbury's Statutes 385.

(i) See L.G.A., 1888, s. 35 (7); 10 Halsbury's Statutes 715.

(k) 18 Halsbury's Statutes 968.

of the parish council or meeting, and in the case of an area situate within a borough or urban district after consultation with the council of the borough or urban district, charge any expenses incurred by them under those Acts on any parish or parishes which in the opinion of the county council are served by any institution which has been provided or is being maintained by that council under those Acts; provided that the county council shall not charge any expenses so incurred on any parish or parishes within an existing library district without the concurrence of the library authority of that district. [625]

Police.—Non-county boroughs having a population of not less than 10,000 according to the census of 1881 and a separate police force are exempt from contribution to the county police rate (m). Those portions of counties which are within the metropolitan police area are also not rateable for county police purposes (n). [626]

Promotion of Bills.—A county council may determine that any expenses incurred by the council in promoting or opposing a Bill under Part XIII. of the L.G.A., 1933, are to be treated as expenses incurred for special county purposes (o). [627]

Registration under Representation of the People Act, 1918.—Expenses incurred under this Act may become expenses for special county purposes as a result of sect. 15 (1) (p), which provides that any expenses properly incurred by a registration officer (who will be the clerk either of the parliamentary county or of the parliamentary borough) in the performance of his duties in relation to registration, including all proper and reasonable charges for trouble, care and attention, and any costs incurred by him as a party to an appeal, shall be paid by the council whose clerk he is, or by whom he is appointed, subject in cases where the registration area is not coterminous with or wholly contained in the area of that council, to such contributions by the council of any other county or borough as the M. of H. may direct (p). [628]

Shops.—Expenses incurred by a county council under the Shops Act, 1912, including expenses which the council undertake to pay to urban or rural district councils under sect. 13 (2) of the Act, are to be defrayed as expenses for special county purposes (q). [629]

Town and Country Planning.—Expenses incurred by a county council under the Town and Country Planning Act, 1932, are to be defrayed as expenses either for general county purposes or for special county purposes chargeable upon such part of the county as the council may determine (r). [630]

Weights and Measures.—Expenses incurred by a local authority under the Weights and Measures Act, 1878, are to be paid out of the local rate (s). The council of a borough is the local authority provided it has a separate court of quarter sessions. If it has no separate quarter sessions it will be the local authority only if it complies with the provisions of sect. 50 of the Act.

(m) County Police Act, 1839, s. 24; 12 Halsbury's Statutes 780; L.G.A., 1888, s. 39 (1); 10 Halsbury's Statutes 717.

(n) County Police Act, 1840, s. 3; 12 Halsbury's Statutes 787.

(o) L.G.A., 1933, s. 257 (1); 26 Halsbury's Statutes 445.

(p) 7 Halsbury's Statutes 557.

(q) Shops Act, 1912, s. 13 (3); 8 Halsbury's Statutes 622.

(r) Town and Country Planning Act, 1932, s. 49 (1); 25 Halsbury's Statutes 415.

(s) Weights and Measures Act, 1878, s. 51; 20 Halsbury's Statutes 383.

Welfare.—Where a county council are not the welfare authority (*t*) for all county districts within their county, the expenses incurred by them under Part VII. of the P.H.A., 1936 (*u*), are to be defrayed as special county purposes chargeable upon those county districts for which the county council are the welfare authority (*a*).

(*t*) For definition of "Welfare authority," see P.H.A., 1936, s. 200 (1), (2), (3); 20 Halsbury's Statutes 460.

(*u*) *Ibid.*, 460. This Part of the Act deals with notification of births; maternity and child welfare, and child life protection.

(*a*) P.H.A., 1936, s. 202; *ibid.*, 461.

SPECIAL EXPENSES IN RURAL DISTRICTS

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See also title SPECIAL RATES.

Introductory.—Sect. 229 of the P.H.A., 1875 (*a*), divided the expenses of rural district councils into "general" and "special" expenses. The object of this division was to make a distinction between expenses incurred in respect of the whole district and those affecting a certain part only, and to charge the latter solely on the ratepayers in the part concerned. For this purpose, districts are divided into contributory places (*b*), and a special rate in respect of any class of special expenses is levied only on those contributory places which are affected, though it is open to the district council to contribute sums as part of their general expenses to defray the whole or any part of any special expenses (*c*). There are, however, certain expenses which may be incurred in respect of part only of the district, but which are, nevertheless, general expenses. Thus, expenses incurred by a rural council with respect to an application for an order authorising a light railway under the Light Railways Act, 1896, are general expenses if allowed by the Light Railway Commissioners (*d*). It has been held also that expenses incurred in the execution

(*a*) See now also the L.G.A., 1933, s. 190 (1); 26 Halsbury's Statutes 409.

(*b*) For definition, see *ibid.*, s. 305; *ibid.*, 465.

(*c*) *Ibid.*, s. 190 (4).

(*d*) Light Railways Act, 1896, s. 16; 14 Halsbury's Statutes 259.

of urban powers obtained by a rural authority under the P.H.A., 1875, sect. 161 (e), are general expenses (f). [631]

Types of Special Expenses.—The only expenses which can be termed special expenses are, according to sect. 190 (2) of the L.G.A., 1933 (g), those which are declared so to be by or under that Act or any other enactment or statutory order.

Under the L.G.A., 1933.—No expenses are expressly declared by this Act to be special expenses, but under sect. 190 (3) (h), the M. of H. may, by order, on the application of a R.D.C., declare any expenses incurred by that council to be special expenses chargeable on such contributory place or places in the district as the order may specify. If these expenses are declared to be chargeable on more than one contributory place the order may apportion them among the contributory places concerned (i).

The L.G.A., 1933, also provides (k) that a R.D.C. may determine that expenses incurred by them in promoting or opposing a Bill shall be raised as special expenses.

Expenses are also declared to be special expenses by or under the following Acts :

Electric Lighting Act, 1882 (l).—Any expenses incurred by a rural sanitary authority under this Act, and not otherwise provided for, including any expenses incurred in connection with the obtaining by them or opposition to the obtaining by any other local authority, company or person, of any licence, order or special act under this Act, are to be special expenses within the meaning of the P.H.A., 1875. Where a local authority, as authorised undertakers, enter into an agreement or arrangement with a joint electricity authority or any other authorised undertakers in pursuance of the Electricity (Supply) Act, 1919, any expenses incurred by the authority in carrying the agreement or arrangement into effect are deemed to be expenses incurred by them under or in pursuance of the Electric Lighting Acts and the provisions of sect. 7 of the Electric Lighting Act, 1882, apply accordingly (m).

Factory and Workshop Act, 1901.—All expenses incurred by a R.D.C. in execution of this Act are to be defrayed as special expenses (n).

Housing Act, 1936.—All expenses incurred by a R.D.C. under Part II. of this Act (which provides for the repair, maintenance and sanitary condition of houses) or under the provisions of Part III. of the Act, relating to clearance areas or improvement areas, are, subject to the provisions of the Act, to be charged as special expenses (o).

Open Spaces Act, 1906.—Expenses of a R.D.C. incurred in execution of this Act are defrayed as special expenses (p).

(e) 13 Halsbury's Statutes 692.

(f) *Lancs. and Yorks. Rail. Co. v. Bolton Union* (1890), 15 App. Cas. 323; 54 J. P. 532; 33 Digest 101, 686. But such orders usually contain a provision that lighting expenses shall be special.

(g) 26 Halsbury's Statutes 409. "Enactment" includes any enactment in a provisional order confirmed by Parliament; "Statutory Order" means any order, rule or regulation, made under any enactment. (S. 305; *ibid.*, 465.)

(h) 26 Halsbury's Statutes 409.

(i) For definition of contributory place, see s. 305; *ibid.*, 465.

(k) S. 257 (2); *ibid.*, 445.

(l) S. 7; 7 Halsbury's Statutes 690.

(m) Electricity (Supply) Act, 1919, s. 32 (2); *ibid.*, 774.

(n) Factory and Workshops Act, 1901, s. 14 (8) (b); 8 Halsbury's Statutes 526.

(o) Housing Act, 1936, s. 116 (1); 29 Halsbury's Statutes 649.

(p) Open Spaces Act, 1906, s. 17 (d); 12 Halsbury's Statutes 390.

P.H.A., 1936.—The following expenses of a rural authority are, so far as they fall to be defrayed out of rates, to be special expenses chargeable on the contributory place in respect of which they are incurred (*q*) : (1) those incurred in connection with sewers or sewage disposal works for any contributory place ; (2) those incurred in connection with a supply of water to any such place (*r*) ; (3) charges and expenses arising out of, or incidental to, the possession of property held by the council in trust for any such place (*s*).

On the other hand, expenses incurred by a rural council in the preparation of a sewerage or water supply scheme, which for any reason is not carried out, have always been regarded by the M. of H. to be general expenses in the absence of an order declaring them to be special. Where, however, the council borrow money with the Ministry's permission for experiments which are unsuccessful, such a loan must clearly be borne by the contributory place (*r*). 【632】

(*q*) P.H.A., 1936, s. 308 (1) ; 29 Halsbury's Statutes 517.

(*r*) Including repair of public well (*Witney v. Wycombe Union Sanitary Authority* (1876), 40 J. P. Jo. 149 D. C.), Where a R.D.C. has, under s. 116, P.H.A., 1936, supplied water to part of a contributory place, the expenses both of supply and of maintenance must, so far as they cannot be defrayed by a reasonable water rate or water rent to be paid by the consumers, be raised as special expenses by a rate on the whole contributory place (*Horn v. Sleaford R.D.C.*, [1898] 2 Q. B. 358 ; 62 J. P. 502 ; 43 Digest 1065, 48), subject, of course, to the council's discretionary right, under s. 190 (4), L.G.A., 1933 (see *ante*), to defray them in whole or in part as general expenses.

(*s*) But it is still open to the council to contribute sums as general expenses under s. 190 (4) of the L.G.A., 1933, *ante*, p. 386.

SPECIAL LIST

See VALUATION LIST.

SPECIAL PROPERTIES

See RATING OF SPECIAL PROPERTIES.

SPECIAL RATES

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SPECIAL EXPENSES - - -	389	LOSSES DUE TO DE-RATING - -	392

See also titles :

ASSESSMENT FOR RATES ;
DE-RATING ;
DIFFERENTIAL RATING ;
DISCOUNT FOR RATES ;
GENERAL EXCHEQUER GRANTS ;
PENNY RATE ;
PRECEPTS ;

RATE ACCOUNTS ;
RATE COLLECTION ;
RATES AND RATING ;
RATING OF OWNERS ;
RURAL DISTRICT COUNCIL ;
RURAL DISTRICT COUNCIL ACCOUNTS ;
SPECIAL EXPENSES IN RURAL DISTRICTS.

Introduction.—Special rates are peculiar to rural district councils. The expenses of a R.D.C. are divisible into " general expenses " and " special expenses " (a), and separate accounts must be kept in the general rate fund of a R.D.C. in respect of (1) general expenses, and (2) each class of special expenses (b). An estimated deficiency in the general rate fund is met by levying rates, viz. a general rate levied on the whole of the district, in order to meet liabilities in respect of general expenses, and a special rate or rates levied on the part or parts of the district separately chargeable, in respect of each class of special expenses (c).

The reason underlying this special privilege of rural district councils is that the development of services in a rural area is frequently uneven, both as to time and cost. Thus the provision of a water supply or of street lighting may be limited to one or two parishes only in the district ; and it is deemed to be equitable that the cost of such services should be borne by the parishes or contributory places (d) which benefit from their provision. Special expenses may, however, be defrayed as general expenses (see *post*). **[633]**

Special Expenses.—Special expenses are those which are declared to be such under any statute or statutory order. The M. of H. may, by order, on the application of a R.D.C., declare any expenses to be special expenses separately chargeable on such contributory place or

(a) L.G.A., 1933, s. 190 (1) ; 26 Halsbury's Statutes 409.

(b) *Ibid.*, s. 191 (2) ; *ibid.*, 410. These accounts are called respectively : (1) general district accounts, and (2) special district accounts (*ibid.*).

(c) *Ibid.*, s. 192 ; *ibid.*.

(d) " Contributory place " is defined in *ibid.*, s. 305 ; *ibid.*, 465, as :

(a) a rural parish no part of which is included in a special drainage district * formed under the P.H.A., 1875 (see now P.H.A., 1936) ;

(b) a special drainage district * formed under that Act (see now *ibid.*), and

(c) in the case of a rural parish part of which forms, or is included in, a special drainage district * formed as aforesaid, such part of the parish as is not comprised within that drainage district.

See also P.H.A., 1936, s. 343 (" contributory place ").

* Special drainage districts are now styled " special purpose areas " (P.H.A., 1936, s. 12 (2)).

places as may be specified in the order, and, if more than one contributory place is charged, the order may apportion the expenses amongst them; but the M. of H. may nevertheless direct that, instead of being recovered by means of a special rate, such expenses shall be levied in the part of the district charged as an additional item of the general rate (e).

Where any expenses are payable as special expenses⁵, the R.D.C. may decide to defray them in whole or in part as general expenses, treating the remainder, if any, as special expenses (f). Special expenses incurred for the common benefit of two or more contributory places may be justly apportioned by the council between those contributory places, and separately charged accordingly (g).

Among the statutes under which expenses are or may be declared to be special expenses are the following: Sect. 308 (1), P.H.A., 1936 (h), provides that the following expenses are to be special expenses, without prejudice to the powers of the R.D.C. to defray them wholly or partly as general expenses: (1) expenses incurred in connection with sewers or sewage disposal works for any contributory place; (2) expenses incurred in connection with a supply of water to any such place (i); (3) charges and expenses arising out of, or incidental to, the possession of property held by the council in trust for any such place. For the purpose of (1) and (2), contributions towards the expenses of a joint board are deemed to be expenses incurred by the contributing council (k). A R.D.C. may, with the approval of the M. of H., constitute any part of their district a special purpose area for the purpose of charging thereon exclusively the expenses of works of sewerage, sewage disposal or water supply, or of any other works the expenses of which are declared to be special expenses; and the M. of H. may by order vary or dissolve any special purpose area (l).

A R.D.C. may determine that expenses incurred in the promotion of or opposition to a bill in Parliament under Part XIII., L.G.A., 1933 (m), shall be raised as special expenses (n).

Expenses falling to be met by a R.D.C. under Part II. of the Housing Act, 1936 (provisions for securing the repair, maintenance and sanitary condition of houses) (o), or under the provisions of Part III. of that Act (relating to clearance areas or to improvement areas) are to be charged as special expenses on the contributory place in respect of which they are incurred (p).

(e) L.G.A., 1933, s. 190 (3); 26 Halsbury's Statutes 409.

(f) *Ibid.*, s. 190 (4); *ibid.*

(g) *Ibid.*, s. 190 (5); *ibid.*

(h) 29 Halsbury's Statutes 517.

(i) It has been held that repairing a public well was work which a rural authority might charge as special expenses (*Witney v. Wycombe Union* (1876), 40 J. P. Jo. 149).

Where a R.D.C. has, under s. 116, P.H.A., 1936, supplied water to part of a contributory place, the expenses both of supply and of maintenance must, so far as they cannot be defrayed by a reasonable water rate or water rent to be paid by the consumers, be raised as special expenses by a rate on the whole contributory place (*Horn v. Sleaford R.D.C.*, [1898] 2 Q. B. 358; 62 J. P. 502; 43 Digest 1065, 48), subject, of course, to the council's discretionary right, under s. 190 (4), L.G.A., 1933 (see *ante*) to defray them in whole or in part as general expenses.

(k) P.H.A., 1936, s. 308 (2); 29 Halsbury's Statutes 518.

(l) *Ibid.*, s. 12 (1), (8); 29 Halsbury's Statutes 330.

(m) 26 Halsbury's Statutes 443.

(n) L.G.A., 1933, s. 257 (2); 26 Halsbury's Statutes 445.

(o) 29 Halsbury's Statutes 566.

(p) P.H.A., 1936, s. 116 (1); *ibid.*, 409.

Expenses incurred by a R.D.C. under the Electric Lighting Act, 1882 (*q*), or in carrying into effect an agreement or arrangement with a joint electricity authority or any other authorised undertakers in pursuance of the Electricity (Supply) Act, 1919 (*r*), are to be deemed to be special expenses (*s*).

All expenses incurred by a R.D.C. in enforcing the provision of means of escape, in case of fire from certain factories and workshops are to be defrayed as special expenses and charged to the contributory place in which the factory or workshop is situate (*t*).

Expenses incurred by a R.D.C. in the execution of the Open Spaces Act, 1906, may be defrayed as special expenses (*a*).

Expenses incurred under the Lighting and Watching Act, 1833 (*b*), are also raised by levy of a special rate (*see infra*), although it would not appear to be correct to describe these as special expenses.

Similarly, sums required to meet the expenses of a parish council or parish meeting are made the subject of precepts which are served on the council of the rural district in which the parish is situate (*c*) ; and are then raised by the R.D.C. by means of a special rate levied on the parish (*see title PRECEPTS*). [634]

Levy of Special Rate.—Sect. 3, R. & V.A., 1925 (*d*), directs that rural rating authorities shall make and levy a special rate in each part of the area which is liable to be separately rated in respect of expenditure under the Lighting and Watching Act, 1833 (*b*), or in respect of any special expenses ; but where the amount chargeable on any part of the area for any half-year is less than £10, or would not exceed the product of a general rate of 1*d.* in the pound (*see title PENNY RATE*), the amount must be levied as an additional item of the general rate, and not by a special rate.

Except as mentioned below, all the provisions of the R. & V.A. 1925 (*e*), relating to the general rate apply to a special rate (*see title RATES AND RATING*).

The express provisions of the R. & V.A., 1925, as to special rates include (1) a direction that a special rate is to be made in respect of such period, to be specified in the rate, as may be fixed by the rating authority, who, in fixing the period must have regard to the period during which the charges to be met by the rate accrue (*f*) ; (2) a modification of the information to be included in a demand note for a special rate (*g*) ; and (3) an exemption from liability to special rates to the extent of three-fourths of the rateable value of tithes, and land covered with water or used as a canal or as a towing path for a canal or as a railway (*h*).

(*q*) 7 Halsbury's Statutes 686.

(*r*) *Ibid.*, 754.

(*s*) Electric Lighting Act, 1882, s. 7, as extended by the Electricity (Supply) Act, 1919, s. 32 (2).

(*t*) Factory and Workshop Act, 1901, s. 14 (8) (b) ; 8 Halsbury's Statutes 526

(*a*) Open Spaces Act, 1906, s. 17 (d) ; 12 Halsbury's Statutes 390.

(*b*) 8 Halsbury's Statutes 1186.

(*c*) L.G.A., 1933, s. 193 (6) ; 26 Halsbury's Statutes 441.

(*d*) 14 Halsbury's Statutes 621.

(*e*) *Ibid.*, 617.

(*f*) R. & V.A., 1925, s. 4 (3) ; *ibid.*, 623.

(*g*) *Ibid.*, s. 7 (2) ; *ibid.*, 626. A form of demand note for Special Rate is prescribed by the M. of H. in the R. & V. (Forms of Demand Note) Rules, 1930 (S.R. & O., 1930, No. 542).

(*h*) R. & V.A., 1925, s. 3 (2) ; *ibid.*, 622, as amended by the L.G.A., 1929, s. 187

In view of this preferential exemption from special rate, it will be seen that where special expenses are charged as general expenses, either by order of the M. of. H. or at the discretion of the R.D.C., the effect is to alter the incidence of the rate. [635]

Losses Due to De-rating.—As explained in the title GENERAL EXCHEQUER GRANTS (see Vol. VI., p. 217), compensation is provided for losses on account of special (or parish) rates in consequence of de-rating by means of an addition to the sum set aside out of the county apportionment. It was first provided by sect. 92 (1) (b) of the L.G.A., 1929 (*i*), that a sum equal to 25 per cent. of the losses on account of special and parish rates (as determined under the Act) should be paid to the R.D.C. by the county council during the first and second fixed grant periods, and that thereafter the sum should be such as the county council might determine. Sect. 5 of the L.G. (Financial Provisions) Act, 1937 (*k*), now provides, however, that the sum to be paid during the third fixed grant period (1937-1942) shall not be less than the sum payable in the second period. [636]

and Sched. XII., Part V.; 26 Halsbury's Statutes 378, and the Tithe Act, 1936 Sched. IX.; 29 Halsbury's Statutes 974.

- (*i*) 10 Halsbury's Statutes 942.
(*k*) 30 Halsbury's Statutes 879.
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SPECIAL SESSIONS

See RATING APPEALS.

SPECIFICATION OF PRIVATE STREET WORKS

See PRIVATE STREETS.

SPORTING RIGHTS

See RATING OF SPECIAL PROPERTIES.

SQUARES

See GARDENS AND SQUARES.

STABLES AND MEWS

NUISANCES ARISING FROM STABLES	PAGE 393	LONDON	PAGE 395
REMOVAL OF MANURE FROM STABLES	—	—	—

*See also titles : ANIMALS, KEEPING OF ;
NUISANCES ;
REFUSE.*

Nuisances Arising from Stables.—Any premises in such a state as to be prejudicial to health or a nuisance, or any animal kept in such a place or manner as to be prejudicial to health or a nuisance, or any accumulation or deposit which is prejudicial to health or a nuisance, are deemed to be statutory nuisances within the meaning of sect. 92, P.H.A., 1936 (a), liable to be dealt with summarily in manner provided by that Act. The expression "prejudicial to health" means injurious, or likely to cause injury to health (b). With regard to nuisances from accumulations or deposits, a penalty may not be imposed on any person where the accumulation or deposit is necessary for the effectual carrying on of any business or manufacture, if it is proved that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture and that the best practicable means have been taken for preventing it from being prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood (c). For full details as to the procedure for dealing with nuisances, see title **NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH ACTS**.

In a case (d) where manure from a stable was kept so that the neighbours had to shut their windows, a conviction was obtained under a local Act which imposed a penalty in respect of offensive matter being kept so as to cause a nuisance.

A nuisance at common law may exist where the effluvia from stables is not such as to be injurious to health (e).

A local authority may make bye-laws for the prevention of nuisances

(a) 29 Halsbury's Statutes 394.

(b) P.H.A., 1936, s. 343 ; 29 Halsbury's Statutes 538.

(c) *Ibid.*, s. 94 (4) ; 29 Halsbury's Statutes 397.

(d) *Smith v. Waghorn* (1863), 27 J. P. 744 ; 36 Digest 179, 238.

(e) See *Rapier v. London Tramways Co.* (1898), 2 Ch. 588 ; 36 Digest 175, 206.

arising from, *inter alia*, the keeping of animals so as to be prejudicial to health (f). As to the making of bye-laws, see title BYE-LAWS, Vol. II., pp. 359 *et seq.*

Bye-laws made in accordance with the above provisions usually include clauses relating to stables as follows :

- (1) Every occupier of a building or structure wherein any horse or other beast of draught or burden or any cattle or swine may be kept shall provide in connection with such building or premises :
 - (a) a suitable receptacle or receptacles for all filth produced in the keeping of any such animal in such building or structure; and
 - (b) a sufficient drain so constructed and maintained as effectually to convey all urine or liquid filth or refuse from such building or structure into a sewer, cesspool, or other proper receptacle.
- (2) He shall, as regards any receptacle provided in pursuance of this bye-law, comply with the following requirements :
 - (a) the bottom or floor of the receptacle shall not be lower than the surface of the ground adjoining it;
 - (b) the receptacle shall be so constructed and maintained as to prevent any escape of the contents thereof, or any soakage therefrom into the ground or into the wall of any building;
 - (c) the receptacle shall have a suitable cover, and, when not required to be open, shall be kept properly covered therewith; and
 - (d) the receptacle shall be emptied of its contents once at least in every week (g).

In rural districts or parts of districts which are rural in character (even if in an "urban" district or borough) it is suggested by the M. of H. that this bye-law should apply only where animals are kept within sixty feet from any dwelling-house in another curtilage. [637]

Removal of Manure from Stables.—If it appears to the sanitary inspector of any borough or urban district, or of a rural district or contributory place in which sect. 49, P.H.A., 1875 (h), was in force on September 30, 1937, that any accumulation of noxious matter ought to be removed, he must give notice to the person to whom it belongs, or to the occupier of the premises on which it is found, to remove it. If the notice is not complied with within twenty-four hours from the service thereof, the sanitary inspector may remove the matter referred to. The local authority may recover the expenses of any action reasonably taken by their inspector, from the owner or occupier in default (i).

It should be noted that an accumulation of manure may be dealt with under the nuisance provisions of the P.H.A., 1936 (j), as well as under sect. 79 of that Act (k). It should also be observed that a local

(f) P.H.A., 1936, s. 81; 29 Halsbury's Statutes 387.

(g) See model byelaws of the M. of H., Series II.

(h) 18 Halsbury's Statutes 646.

(i) P.H.A., 1936, s. 79; 29 Halsbury's Statutes 386.

(j) *Ibid.*, ss. 92—95; *ibid.*, 394—397.

(k) See note (d), *ante*, p. 393.

authority may sell any materials removed by them in abating a nuisance (*l*).

The council of a borough or U.D.C., or a R.D.C. or contributory place in which sect. 50, P.H.A., 1875, (*m*), was in force on September 30, 1937, may, by public or other notice, require the periodical removal, at such intervals as may be specified in the notice, of manure or other refuse from mews, stables or other premises. If any person fails to comply with the terms of such a notice, he is liable *without further notice* to a penalty not exceeding twenty shillings (*n*).

It is not the general practice of the M. of H. to put the provisions of sects. 79 and 80, P.H.A., 1936, *supra*, into force in rural districts (*o*). In such districts the nuisance provisions (*p*) must be applied, together with any bye-laws made under sect. 81, P.H.A., 1936 (*q*). [638]

London.—Sect. 94 of the P.H. (London) Act, 1936 (*r*), enables sanitary authorities to collect manure and other refuse from stables with the written consent of the occupier; sanitary authorities may also require the periodical removal of manure or other refuse from stables. Sect. 118 of the Act (*s*) provides that the keeping of animals in such a place or manner as to be a nuisance or injurious or dangerous to health shall be a nuisance which may be dealt with summarily; it is the duty of sanitary authorities to make and enforce bye-laws under this section. Under sect. 120 (*t*) a petty sessional court may by order prohibit, for the keeping of animals, the use of premises which are unfit for the purpose.

As to the amounts of open space required in the case of domestic buildings and stables with mews at the rear, see London Building Act, 1930, sect. 56 (*u*). As to a building in which there is a stable and also a room used for the purpose of an office, factory, workshop, workroom or for habitation, see bye-law (No. 141) made under the London Building Act (Amendment) Act, 1935. [639]

(*l*) P.H.A., 1936, s. 276; 29 Halsbury's Statutes 499.

(*m*) 13 Halsbury's Statutes 647.

(*n*) P.H.A., 1936, s. 80; 29 Halsbury's Statutes 387.

(*o*) As to investment of rural districts with urban powers, see P.H.A., 1936, s. 13; 29 Halsbury's Statutes 330.

(*p*) See note (*j*), *ante*, p. 394.

(*q*) 29 Halsbury's Statutes 387.

(*r*) 30 Halsbury's Statutes 495.

(*s*) *Ibid.*, 509.

(*t*) *Ibid.*, 510.

(*u*) 23 Halsbury's Statutes 245.



STAFFS OF LOCAL AUTHORITIES

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See also titles : APPOINTMENT OF STAFF ; COMMITTEE CLERKS.

Introduction.—The increasing range and complexity of the functions of local government are constantly referred to in all discussions on the subject. In relation to staffing questions they assume particular importance. In the words of the Hadow Report (*a*) (*infra*), “More than ever before local authorities require to have at their disposal officers on whom they can fully rely, both for advice on the many critical questions that come before them, and for the execution of decisions when taken.”

Under this title, therefore, it is necessary to consider not only what powers are vested in local authorities to appoint, control and dismiss staff, but also the manner in which those powers are exercised and the action which is or may be taken to ensure that the staffs of local authorities possess the education and training appropriate to their important and frequently difficult tasks.

Legal requirements in this connection are set out under the title OFFICERS (*b*), which also contains a statement showing the extent to which freedom of action by local authorities is limited by central control. Statutory powers are wide but, save in a few cases, they are not specific.

It is, therefore, not unnatural, regard being paid to the wide variations in status, financial strength, area and population served by different authorities, that the practical approach to problems of staffing reveal substantial differences. In this, more perhaps than in some other matters, the autonomy of local authorities is real, and attachment to it strong.

Certain aspects of the staffing of local authorities were the subject of comment in the Final Report of the Royal Commission on Local

(*a*) Departmental Report on Recruitment, etc., of Local Government Officers, 1934.

(*b*) Vol. IX., p. 441.

Government (1923-1929) and, in accordance with their suggestion, a Departmental Committee of the M. of H. was established in 1930 under the chairmanship of Sir Henry Hadow, C.B.E., J.P., with the following terms of reference : ". . . to inquire into and make recommendations on the qualifications, recruitment, training and promotion of local government officers."

Their report, published in January, 1934, is generally known as the Hadow Report, and is referred to under that title in the following pages. It represents the last authoritative survey of theory and practice in relation to staffing problems and, therefore, merits attention. Whilst the validity of the conclusions summarised below has been widely accepted, the implementation of some of the specific proposals has been slow. [640]

The Hadow Report.—The committee received evidence from bodies or persons of three classes : (1) Local authorities and associations of authorities, e.g. The L.C.C., The Association of Municipal Corporations, etc. (2) Associations of officers and professional bodies whose membership is restricted to officers, e.g. The National Association of Local Government Officers, Institute of Municipal Treasurers and Accountants, etc. (3) Professional bodies, universities and independent witnesses with specialist knowledge.

The evidence (a valuable summary of which appears in the report) shows conflict of opinion on certain points, notably : (i.) The necessity or otherwise for the clerk of an authority to possess a legal qualification. (ii.) The desirability of the system of articled pupilage. (iii.) The possibility of recruitment from higher age groups and particularly from amongst university graduates.

On the other hand, it was generally agreed that : (i.) A minimum educational standard should be demanded from new entrants. (ii.) Such entrants should serve a probationary period. (iii.) Vacancies should be widely advertised unless filled by internal promotion. (iv.) Establishment committees should be set up charged with the oversight of questions affecting staffs.

The committee found that on the whole a high standard was maintained, and paid a tribute to the work of associations of officers. They felt, however, that recruitment was haphazard and unrelated to the educational system, and that the attention paid to training and qualifications was inadequate. Twenty-five proposals were made which are summarised briefly below.

Recruitment (Proposals 1-13).—Vacancies, in the absence of internal promotion, should be widely notified, and candidates should be interviewed by committees rather than by officers. Near relationship to members or officials should be closely scrutinised, and canvassing should disqualify. Authorities should employ every member of the staff directly, should appoint newcomers to the service on a probationary basis, and should not dismiss a senior officer without notice to all members of the council.

Junior clerical officers should not be recruited below the age of sixteen (a proportion preferably at eighteen or nineteen). They should possess a minimum educational qualification, and should be required to sit for an open competitive examination. Central machinery should be established for the recruitment of university graduates by competitive examination, and provision made for their entry into the service of the larger authorities.

Professional and technical officers should not necessarily be recruited from inside the service ; and no premium should be required from pupils articled to officers with the approval of the local authority.

Qualification of Principal Officers (Proposals 14—16).—Whilst a legal qualification for the clerk to a local authority may be desirable, it should not be regarded as essential ; administrative ability should be the true criterion. In the case of other officers, the existing practice of requiring appropriate professional qualifications should be maintained, but greater attention should be paid to administrative ability.

Subordinate administrative assistants might be appointed in certain instances, and in all cases greater attention should be paid to training in, and study of, administration for junior officers.

Training and Promotion (Proposals 17—22).—Comparable grading and salary schemes and compulsory superannuation were considered necessary, especially to facilitate a freer movement of clerical officers between authorities.

Eligibility for promotion from the general grade should depend on passing either the first part of a recognised professional examination or an examination in administration to be devised and instituted by the joint action of local authorities and, for promotion purposes, chief officers should keep staff progress records. Approved qualifications might be recognised by grants or increments, and assistance might be given to officers by the establishment of appropriate study courses and the grant of leave in special cases. The committee felt that the whole question of technical qualifications should be considered by a central body representative of local authorities.

General Conclusions (Proposals 24 and 25).—The committee considered that all questions affecting recruitment, qualifications, training and promotion should be assigned to a central committee in every local authority.

As their final recommendation, they called for the establishment of a central advisory committee representative of associations of local authorities and the L.C.C. This they said is “The principal need of the Service . . .” [641]

Practice in Relation to the Hadow Report. *The Central Advisory Committee.*—The departmental committee attached great importance to the establishment of this body, and the Minister of Health issued a circular in which he called attention to salient features of the report, and made proposals for the establishment of the central advisory committee.

The Association of Municipal Corporations were unwilling to be represented on the committee, but subsequently agreement was reached to form the committee with provision for representation of the Association of Municipal Corporations if at a later date they should so desire. The National Association of Local Government Officers have consistently advocated that the functions of the central advisory committee should be performed by the National Joint Councils for Officers and the Provisional Whitley Councils. In October, 1937, the M. of H. intimated that he could not agree to this course, but thought it possible that in the future the committee would require a direct representation of officers. Whitleyism in the local government service is referred to later (p. 401). It is, of course, too soon to estimate the effect which this body will have. [642]

Establishment Committees of Local Authorities.—The practice of

appointing a single committee to deal with general questions affecting staff is growing slowly. In an inquiry, to which further reference is made, the National Association of Local Government Officers found that, out of 819 authorities considered, 264 appointed such committees.

Existing committees have varying powers which include some or all of the following : organisation of recruitment ; appointment of officers ; initiation and supervision of post-entry training schemes ; transfer and promotion of staff ; annual scrutiny in relation to the grading of, and grant of increments to staff ; supervision of probation and discipline.

In the absence of the control which such a committee can exercise, anomalies arise as between officers of different departments, transferability is hampered, and the introduction of graded salary scales made difficult. Particularly as regards senior appointments a close co-operation with the executive committee is necessary. Some authorities appoint a staffing board or special sub-committee to interview candidates and make routine appointments.

Where establishment committees exist they usually deal with questions of staff discipline on report from the chief officer of the department concerned. [648]

Education, Training and Qualification of Staff.—In a very few cases, e.g. medical officers and inspectors of weights and measures (*d*), special qualifications are prescribed by statute. Apart from these cases, local authorities need not require capacity in their officers to be evidenced by any form of special training. In practice, chief officers of most large and many small authorities possess appropriate professional or technical qualifications, and considerable attention is usually paid to these in making appointments. It is, indeed, sometimes argued that undue weight is attached to these qualifications as compared with administrative training and experience.

Qualifications are normally obtained by passing an examination organised by bodies which may consist solely of officers of local authorities, or may function primarily in other walks of life. To the first category belong such bodies as the Institute of Municipal Treasurers and Accountants (Incorporated), and the Association of Municipal and County Engineers, whilst the second includes, e.g. The Law Society, The Institute of Chartered Accountants, and Royal Institute of British Architects. Another form of organisation is the Poor Law Examination Board which, as its name implies, is an examining body only.

There is no one recognised method of training with a view to obtaining these varying qualifications. Certain of them are open only to articled pupils who may be required to make some attendance at university or equivalent courses. This is true of the Law Society. In the case of examinations open to the staffs of local authorities, general tuition is frequently obtained by means of correspondence courses and occasionally through the medium of classes organised at technical colleges and evening institutes.

What is certainly lacking is an integrated system of preliminary training in administration. Courses are now organised leading to diplomas in public administration at almost all the universities whilst a degree in administration is provided by Manchester University. The Joint Students' Committee of the Institute of Municipal Treasurers and Accountants has suggested some time ago the establishment of two-year

courses of a general character for the benefit of new entrants into the finance departments of local authorities, and experimental courses were undertaken by the London Students' Society. It is significant that this important movement has sprung largely from the efforts of officers themselves, and from outside educationists.

It is perhaps natural that associations of officers should view with some alarm the potential introduction of university graduates into the service in the absence of a widespread and well-knit system of education and training for entrants from the lower age groups. This is, no doubt, a matter to which the central advisory committee will give careful attention.

The National Association of Local Government Officers has steadily developed educational activities which now embrace the provision of a correspondence institute, a system of examinations for clerical officers, a loan scheme, a central library and annual summer schools, both at home and abroad. The initiation of a number of area education committees has lead to an extension of this valuable work.

The Institute of Public Administration also provides a focus for discussion and research of a "post-graduate" character relating to both central and local administration, including the questions of recruitment and training of personnel. The institute publishes a quarterly journal to which reference may usefully be made (see title INSTITUTE OF PUBLIC ADMINISTRATION). [644]

Recruitment, Control and Remuneration of Staff (e).—The usual methods of recruitment of junior staff are (a) by competitive examination, (b) by interview.

Attention is drawn to vacancies either by advertisement in local papers or by notification to schools. Some authorities maintain a waiting list of applicants from which a selection for interview or examination is made as occasion arises. The system of competitive examination was favoured by the Hadow Committee and, although this method is probably not yet general, it is adopted by some authorities. Tests devised by the National Institute of Industrial Psychology are sometimes used.

Accusations of nepotism in regard to recruitment of junior staff are frequently made and, whilst instances may occur, it is probably just to say that they are increasingly rare.

Senior staff and chief officers are usually recruited either by promotion or by selection from applicants obtained by advertisement (*ante*, p. 397), the selection being made after interviews.

The desirability of a central committee to deal with general matters affecting staff has already been discussed and such questions as those relating to time-keeping, leave, attendance at special classes, etc., fall to be considered by such a committee where in existence.

Some authorities issue printed staff regulations which define in detail the relationship between the council and its officers. This is not a widespread practice; but such regulations, if properly drafted, are a valuable aid to the establishment of satisfactory staff relations. The regulations of the L.C.C. constitute a bulky document dealing in detail with each category of officers employed by the council. This is not so necessary, but the principle can be commended even to smaller authorities.

Graded salary scales have been widely adopted by different types of authorities and their extension would constitute a desirable development. In the "Nalgo" inquiry, it was found that they had been adopted by rather more than half the authorities dealt with. Their preparation requires careful consideration and classification of duties to be performed by different officers and an essential consideration is the grading of posts and not of persons. From the standpoint of the officer, a grading scheme and salary scale impart a desirable element of certainty into his personal economy whilst the council, preferably through its establishment committee, can conduct a systematic scrutiny of duties and salaries at regular intervals. On both sides the unfortunate results of personal idiosyncrasies can be minimised.

Suggested scales for different classes of officers have been drawn up from time to time as a basis for negotiation by professional bodies of officers and by provincial Whitley councils, to which further reference is made below. Scales of this character have the advantage of maintaining comparability between different authorities, due regard being paid to substantial variations in the cost of living, e.g. between London and the provinces.

Salary scales normally provide for a number of steps within a series of grades. It is usual to provide for annual increments within grades subject to satisfactory reports from the chief officers of the various departments, whilst promotion from grade to grade is normally dependent on vacancies occurring. This is usually regarded as a satisfactory compromise if a reasonable balance is maintained between the size of increments and the length of scale sections. The advantages of annual increments subject to adequate safeguards are very great, removing a source of strain which is very noticeable on the occasion of annual reviews of salaries where this practice does not operate.

[645]

Whitleyism in Relation to Local Government.—The underlying principle of the Whitley council system is the establishment of joint committees of employers and employees for settlement by negotiation of matters affecting the salary and service conditions of employees. The idea was originally derived from suggestions made by a committee appointed in 1916, who intended it primarily as an effort to secure an advance in industrial harmony.

As affecting the local government service the development of Whitleyism dates from 1919 when the N.A.L.G.O. first approached the Associations of Local Authorities on the subject.

A short-lived National Joint Council for Local Authorities' administrative, technical and clerical services was formed in 1920, its principal achievements being :

1. Prescription of provincial areas for England and Wales.
2. Drafting and issuing model constitutions for provincial councils.
3. Drafting constitutions for local joint committees.
4. Establishment of certain provincial committees.
5. Issue of a national minimum scale of salaries, and recommendations concerning war bonus, holidays, overtime and superannuation.

Until recently, there were only four provincial councils in existence dating from the immediate post war period, viz. London, Lancashire and Cheshire, West Riding and North Wales. The most important tasks of these bodies have been to formulate, and secure adhesion to,

grading schemes and salary scales operative over relatively wide areas.

During the last two years, new provincial councils have been formed and are now in operation over almost the whole of the country.

A full system of Whitley councils has three grades—national, provincial and local and, of these, the provincial council is probably pivotal so far as the local government service is concerned. Even within relatively small areas, conditions may differ widely, but there is a better prospect of devising standard conditions over such areas which will be acceptable locally, than if a single scale or set of scales is formulated nationally and suggested for local adoption. Members of local authorities appear to have greater confidence in the deliberations of a body on which they can be specifically represented, and are more prepared to act on the recommendations of such a body.

It should be noted that, at the present time, no authority can be compelled to seek representation on a provincial council, or to form, or agree to the formation of, a local joint committee. Neither can they be compelled to adopt the recommendations of a provincial council operating over their area.

The existing provincial councils have dealt with other questions than those relating to salaries. They have paid considerable attention to the establishment of minimum educational standards for entrance to the service and the encouragement of recruiting suitably qualified staffs to senior posts. In the case of the Lancashire and Cheshire Joint Council considerable work has been done in regard to the adoption of superannuation provisions, and the Central Lancashire (Local Authorities) Joint Superannuation Scheme has now thirty-seven constituent authorities.

Perhaps the greatest advantage of the system is the fact that negotiations on salary and service conditions can be conducted in a relatively impersonal atmosphere, and the discussion tends to revolve about the possibility of agreement, rather than the facts of disagreement.

It is equally true that the system can only be successful if all parties are prepared to surrender some part of their absolute freedom of action and accept a modicum of social discipline. [646]

Joint Control.—In certain instances, officers may be employed by combinations of authorities, or whilst in the full-time employment of one authority may undertake duties for another body.

Where a joint committee is established, staff may be provided by one of the constituent authorities and be engaged either wholly or partly on the work of the committee, but remain under the jurisdiction of the employing authority. This will usually be the case where the joint committee is temporary, advisory or consultative.

In the case of joint committees or boards having a separate legal status, officers are usually separately engaged and are then subject to the direction and control of the joint body. Even in these cases, however, it frequently happens that ancillary services, e.g. legal and financial, are rendered by officers of constituent authorities and special payment made either to the officer or to the primary employing authority.

In connection with the registration of electors and the preparation of jurors' lists, certain officers are designated by rating authorities at the request of registration officers, to perform specific duties. Having

regard to the decision in *Stoke Newington v. Richards* (*f*) and the letter of the M. of H. following it, where it was held that analogous duties performed by a town clerk were performed in virtue of his office, it would appear that the control of the officer remains with the primary employing authority. He must, however, obey the instructions of the registration officer so far as they relate to the specific duties which he is designated to perform. This is important as affecting the superannuation position of these officers, since fees received for performance of the designated duties are treated as emoluments of office and have to be taken into account for superannuation purposes.

In some cases rural district councils act as local committees of the county council for the performance of certain highway functions. For this purpose they direct the necessary staff, but the county council are the employing authority. This contrasts, of course, with the position of e.g. surveyors to urban councils where highway functions relating to county roads have been claimed by, or delegated to them. [647]

Pension Rights.—This subject is fully discussed under the titles SUPERANNUATION, FIREMAN and POLICE PENSIONS, but it may be convenient here to note the different provisions which still govern various classes of officers, even after the passing of the L.G. Superannuation Act, 1937 (*g*).

Police Pensions Act, 1921 (*h*).

Poor Law Officers' Superannuation Act, 1896 (*i*). (This now ceases to apply to transferred poor law officers, who become contributory employees under the new Act.)

Asylum Officers' Superannuation Act, 1909 (*k*).

Teachers' Superannuation Act, 1925 (*l*).

Fire Brigade Pensions Act, 1925 (*m*).

Coroners' Amendment Act, 1926 (*n*).

Scheme for Probation Officers under the Criminal Justice Act, 1925 (*o*). [648]

London.—*L.C.C.*—Under the London Government Act, 1939, sects. 70—75 (*p*), the L.C.C. may appoint and remove the clerk of the county council, county treasurer, county surveyor, and any other officers whose remuneration is paid out of the county rate. Sect. 83 (13), L.G.A., 1888 (*q*), provides a disqualification for full-time paid officers from serving in Parliament. Sects. 82—87 of the London Government Act, 1939 (*r*), deal with the appointment of deputies and the security, remuneration and accountability of officers. Sect. 92 (*s*) enables the L.C.C. to pay compensation on injury or death in the course of employment of any workman or person employed by the council. Sect. 93 (*t*) enables the council to pay to certain persons without grant of probate or administration any sum of money not exceeding £100 which is due to a deceased employee or pensioner, and sect. 94 (*u*) enables the council to pay to certain institutions or persons moneys due

(*f*) 99 L. J. (K. B.) 1.

(*h*) 12 Halsbury's Statutes 873.

(*k*) 11 Halsbury's Statutes 452.

(*m*) 18 Halsbury's Statutes 1095.

(*o*) 11 Halsbury's Statutes 395.

(*g*) *Ibid.*, 755.

(*s*) *Ibid.*, 302.

(*u*) *Ibid.*, 304.

(*g*) 30 Halsbury's Statutes 385.

(*i*) 12 Halsbury's Statutes 949.

(*l*) 7 Halsbury's Statutes 317.

(*n*) 3 Halsbury's Statutes 780.

(*p*) 32 Halsbury's Statutes 294—296.

(*r*) *Ibid.*, 298—300.

(*t*) *Ibid.*, 303.

to mentally disabled officers or pensioners. Officers must under sect. 90 disclose any interest in contracts (a).

The L.C.C. Staff Association has been formed to represent the interests of the staff and the council has appointed a special committee on staff appeals to hear any appeals by officers and employees with regard to charges against them of misconduct or indiscipline.

Metropolitan Borough Councils.—The London Government Act, 1939, sects. 76—81 (a), enables borough councils to appoint, remove and remunerate clerks, treasurers and surveyors and other officers and servants as may be necessary. Sects. 76—94 referred to above (under L.C.C.) also apply. As to pension rights, see title SUPER-ANNUATION. [649]

(a) 11 Halsbury's Statutes 301.

STAGE PLAYS, LICENSING OF

See THEATRES.

STAGNANT WATERS

See PONDS.

STALLAGES

See TOLLS AND STAGES.

STAMP DUTIES

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General.—A list is given in Sched. I. of the Stamp Act, 1891 (*a*), which was a consolidating Act, of specified instruments upon which stamp duties are to be levied, with the amount of such duty and of exemptions, if any. The method of paying such duties are set out, and these are either by impressed stamps (*b*), or adhesive stamps (where the amount is less than two shillings and sixpence) (*c*). The method of cancellation of such stamps is also given. Unstamped or insufficiently stamped documents may be stamped after their execution, on payment of the unpaid duty and a penalty of ten pounds (*d*). Exemptions are also made by later Acts and include documents relating to trade unions and trade protection societies (*e*), receipts, bonds and other documents under the National Health Insurance Act, 1936 (*f*), receipts for allowances under the Unemployment Act, 1934 (*g*), and warrants, receipts and powers of attorney under the saving certificate regulations (*h*).

The question of stamp duty on the more important financial operations of local authorities is dealt with in the titles BONDS (*i*), HOUSING BONDS (*k*), LOCAL LOANS (*l*), MORTGAGES (*m*) and STOCK (*n*), and as to other functions in the titles AUDIT (*o*) and ELECTRICITY (*p*).
[650]

Contracts.—Except where expressly stated in a statute or order bonds, covenants and deeds, unless otherwise charged or set out in the schedule of the Act of 1891, must pay a stamp duty of ten shillings (*q*),

- (*a*) S. 1 and Schedule ; 16 Halsbury's Statutes 618, 656.
- (*b*) S. 2 ; *ibid.*, 618.
- (*c*) Ss. 7, 8 ; *ibid.*, 620.
- (*d*) S. 15 ; *ibid.*, 623.
- (*e*) Finance Act, 1936, s. 29 ; 29 Halsbury's Statutes 770.
- (*f*) S. 179 ; *ibid.*, 1177.
- (*g*) S. 50 ; 27 Halsbury's Statutes 799.
- (*h*) S.R. & O., 1933, No. 1149 ; Art. 29. As to exemption under present emergency legislation, see War Risks Insurance Act, 1939, ss. 18, 18A ; 32 Halsbury's Statutes 927, 928, and Butterworths' Emergency Legislation Service.
- (*i*) Vol. II., p. 147.
- (*k*) Vol. VII., p. 95.
- (*l*) Vol. VIII., p. 145.
- (*m*) Vol. IX., p. 25.
- (*n*) Post, p. 449.
- (*o*) Vol. I., p. 508.
- (*p*) Vol. V., p. 296.
- (*q*) Stamp Act, 1891, Sched. I. ; 16 Halsbury's Statutes 665, 668, 669.

and it is to be noticed that this includes the appointment of an arbitrator and his award (*r*). Both on conveyances (*s*) and leases there is an *ad valorem* duty on the latter from one penny upwards according to rent (*t*). An agreement under hand only and not otherwise specifically charged with any duty must have a stamp of sixpence, which may be adhesive (*u*). No stamp is necessary, however, where the matter of the agreement is of a value of less than five pounds, if it is for the hire of any labourer or servant, if it is made for or relating to the sale of any goods, wares or merchandise, or if it is in connection with wages on a ship (*a*). An offer to supply certain premises with water was held to be made for the "sale of goods" under an earlier Act (*b*). By sect. 7 of the Finance Act, 1907 (*c*), hire purchase agreements must be stamped either as contracts or deeds. The duty on a receipt is twopence, but there are exceptions to this, the principal being a receipt for wages or salary (*d*). By the Seventh Schedule to the L.G.A., 1929 (*e*), no stamp duty is to be paid on any instrument relating to the sale, exchange or other disposal of parish property. A certificate of registration for an alkali works must have a stamp of ten pounds, and for any other works under the Alkali, etc., Works Regulation Act, 1906, of six pounds (*e*). [651]

Highways.—An agreement made or entered into pursuant to the Highway Acts for or relating to the making, maintaining or repairing of highways needs a sixpenny stamp only (*f*). This does not refer to agreements as to private street works. By sect. 8 of the Trunk Roads Act, 1936 (*g*), stamp duty is not payable on instruments for purposes of that Act, on a certificate of the Minister of Transport. [652]

Poor Law.—No stamp duty is chargeable on any mortgage, bond, instrument or assignment, given by way of security under the Poor Law Act, 1930, or any rules, orders or regulations made under it, nor on any contract or agreement (*h*). An instrument of apprenticeship of a poor law child must be stamped with a duty of two shillings and sixpence (*i*) unless it is in a sea fishing boat (*k*). [653]

Copies and Extracts.—A stamp duty of one penny must be paid for a certified copy or extract from any register of births, baptisms, marriages, deaths or burials, except those furnished by a clergyman, registrar or other official person for the purpose of any Act (*l*), and

(*r*) Revenue Act, 1906, s. 9 ; 16 Halsbury's Statutes 735.

(*s*) Stamp Act, 1891, Sched. I. ; *ibid.*, 666, as amended by Finance Act, 1910, s. 73 ; *ibid.*, 754 and Finance Act, 1920, s. 36 (2) ; *ibid.*, 854.

(*t*) Sched. I. ; *ibid.*, amended by Finance Act, 1910, s. 75 ; *ibid.*, 756, and Finance Act, 1924, s. 35 ; *ibid.*, 925.

(*u*) Stamp Act, 1891, s. 22 ; 16 Halsbury's Statutes 625.

(*a*) *ibid.*, Sched. I. ; *ibid.*, 659.

(*b*) *West Middlesea Waterworks Co. v. Suverkrop* (1829), 4 C. & P. 87 ; 43 Digest 1077, 128.

(*c*) 16 Halsbury's Statutes 736.

(*d*) Stamp Act, 1891, Sched. I. ; *ibid.*, 678.

(*e*) S. 9 ; 13 Halsbury's Statutes 898, amended by the Finance Act, 1922, s. 47 ; 16 Halsbury's Statutes 911.

(*f*) As to decisions before the L.G.A., 1929, in regard to the meaning of maintenance, etc., see *Cumberland County Council v. Inland Revenue Commsrs.* (1898), 78 L. T. 679 ; 26 Digest 857, 832, and *Southampton County Council v. Inland Revenue Commsrs.* (1905), 92 L. T. 364 ; *ibid.*, 833.

(*g*) 29 Halsbury's Statutes 196.

(*h*) S. 162 ; 12 Halsbury's Statutes 1047.

(*i*) Stamp Act, 1891, Sched. I. ; 16 Halsbury's Statutes 661.

(*k*) Merchant Shipping Act, 1894, s. 395 (7) ; 18 Halsbury's Statutes 310.

(*l*) Stamp Act, 1891, Sched. I. ; 16 Halsbury's Statutes 667.

of one shilling for copies or extracts from wills or letters of administration (m).

London.—The Local Stamp Act, 1869, empowers local authorities to order fees, fines, etc., to be received by means of stamps. Under the L.G.A., 1888, sect. 3 (13) (n), the L.C.C. has the duty of executing the Act. Under sect. 30 (3) of the 1888 Act (o), any matters arising as to the application of the Act of 1869 to any sums received by clerks to justices is referred to the standing joint committee of quarter sessions and of the council. The general law as to stamping documents of London local authorities is the same as that applicable elsewhere.

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(m) Stamp Act, 1891, Sched. I.

(n) 10 Halsbury's Statutes 689.

(o) *Ibid.*, 708.

STANDING JOINT COMMITTEES

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See also titles :

CHIEF CONSTABLE ;

JOINT BOARDS AND COMMITTEES ;

POLICE ;

WATCH COMMITTEE.

I. Introductory.—The L.G.A., 1888, transferred to the then newly-constituted county councils the administrative functions of county justices in general and quarter sessions, but as it was thought to be undesirable that the control of the police and the execution of certain functions relating to the administration of justice should be removed entirely from the purview of the justices, provision was made for the exercise of such functions through a joint committee composed of representatives of the justices and of the county council. The statutory provisions relating to standing joint committees are contained mainly in the L.G.A., 1888, the L.G. (Clerks) Act, 1931, and the L.G.A., 1933. The provisions as to standing joint committees do not apply to county boroughs (L.G.A., 1888, sect. 34 (3) (c)), except so far as such committees are appointed for two or more administrative counties, including county boroughs, under sect. 81 (7) of the L.G.A., 1888.

The standing joint committee is not a body corporate, has not a common seal, and is not empowered to hold land (*a*). [655]

II. Constitution and Functions.—Sect. 30 (1) of the L.G.A., 1888 (*b*), provides that for the purposes of the police, and of clerks of the justices, and joint officers, and of matters required to be determined jointly by the quarter sessions and the council of a county, there shall be a standing joint committee of the quarter sessions and the county council, consisting of such equal number of justices appointed by the quarter sessions and of members of the county council appointed by that council as may from time to time be arranged between the quarter sessions and the council, and in default of arrangement such number taken equally from the quarter sessions and the council as may be directed by a Secretary of State.

Members of the standing joint committee must be qualified in accordance with sect. 30, *i.e.* they must either be justices eligible to sit at quarter sessions or members of the county council; the provisions of the L.G.A., 1933, authorising the appointment on committees of persons who are not members of the appointing council do not apply to the standing joint committee, and a member who ceases to be qualified ceases to be a member of the committee.

Members of the joint committee who are appointed by quarter sessions, are appointed at such times and in such manner as the court determine from time to time, and hold office for such time as may be fixed by the court (L.G.A., 1888, sect. 81 (4), (8), as amended by the L.G.A., 1933, Sched. II., Part III.). *Sembly*, the method of appointment and term of office of the county council members of the standing joint committee is a matter in the discretion of the appointing council, but, as the references to the county council in sect. 81 of the L.G.A., 1888, are repealed by the L.G.A., 1933, and sects. 85 and '91 of the L.G.A., 1933 (Appointment of Committees and Joint Committees) do not apply to the standing joint committee, the position is somewhat obscure.

By sect. 30 (2) of the L.G.A., 1888, the standing joint committee is required to elect a chairman; in the event of an equality of votes, one of the candidates is elected by lot. A casting vote is given to the chairman by sect. 96 (2) of the L.G.A., 1933.

The matters referred to the standing joint committee for determination are any matters arising under the L.G.A., 1888, with respect to: (1) the police (*c*), the clerks of the justices, officers who serve both the quarter sessions or justices and the county council; (2) the provision of accommodation for the quarter sessions or for justices out of sessions,

(*a*) Cf. s. 64 (5) of the L.G.A., 1888, as to the incorporation and powers of holding land, of joint committees of the three ridings or divisions of the counties of York and Lincoln respectively, to whom property of justices of those counties in gaol sessions, was transferred; these joint committees are distinct from standing joint committees established under s. 30 of *ibid.* As to the appointment of clerks to these joint committees, see *ibid.*, s. 83 (10).

(*b*) The references to the clerk of the peace, contained in s. 30 of the L.G.A., 1888, were repealed by s. 17 (3) and Sched. IV. of the L.G. (Clerks) Act, 1931; the standing joint committee retains certain functions relating to clerks and deputy clerks of the peace who were appointed prior to the commencement of the Act of 1931 (July 31, 1931); see *ibid.*, ss. 3 (1), (3), 7 (3). The Act of 1931, and the repeals therein do not apply to London (*ibid.*, s. 16). See also title CLERK OF THE PEACE.

(*c*) As to the functions of the standing joint committee in relation to the police, see titles CHIEF CONSTABLE; COUNTY POLICE.

or use by them or the police or the said clerks of any buildings, rooms or premises ; (3) the application of the Local Stamp Act, 1869, to any sums received by clerks to justices ; (4) anything incidental to the above-mentioned matters ; (5) any other matter requiring to be determined jointly by the quarter sessions and the county council (sect. 30 (3)).

All expenditure determined by the joint committee to be required for the above purposes is to be paid out of the county fund, and the county council shall provide for such payment accordingly (sect. 30 (3)).

The provisions of the L.G.A., 1888, which effect transfer of functions, subject to the provisions of the Act as to the standing joint committee, are :

- (1) Sect. 3 (iv.) dealing with the transfer of business relating to assize courts, judges' lodgings, lock-up houses, court houses, justices' rooms and police stations ; these functions are transferred from quarter sessions to county councils, but the effect of sect. 30 of the L.G.A., 1888, is to refer to the standing joint committee, for determination, matters relating to lock-up houses, court houses (so far as they are used by quarter sessions or by the justices), justices' rooms and police stations.
- (2) Sect. 9 (1) vests in quarter sessions and county councils jointly the powers, duties and liabilities of quarter sessions and of justices out of session with respect to the county police ; these functions are required to be exercised and discharged through the standing joint committee (d).
- (3) Sect. 84 (2) substitutes the standing joint committee for the quarter sessions, justices and local authority in enactments relating to the salaries of, and of fees to be taken by, the salaried clerks of petty sessional divisions (e).

Justices' clerks in counties are appointed by the justices of the various petty sessional divisions under sect. 5 of the Justices' Clerks Act, 1877, but sect. 34 (1) of the Criminal Justice Administration Act, 1914, necessitates the confirmation of any such appointment by the Home Secretary, who must take into consideration any representations made by the standing joint committee ; sect. 34 (2) of the Act of 1914, requires the standing joint committee to fix the salaries of clerks to county justices and gives a power of variation from time to time ; but the county justices for whom the clerk acts (or, in the case of a reduction of salary, the clerk) may appeal to the Home Secretary against the decision of the standing joint committee (f) and the Home Secretary shall thereupon determine the amount of the salary. Sect. 34 (3) of the Act of 1914 provides that if the justices of any petty sessional division make representations to the standing joint committee with a view to the variation of the salary of their clerk, the committee shall consider the

(d) As to the transferred police functions, see title COUNTY POLICE ; legislation subsequent to 1888, dealing with county police defines the police authority in counties as the standing joint committee, either directly or by reference ; and therefore police functions arising since 1888 fall to be discharged by the standing joint committee.

(e) Where the appointments of clerks to justices are part time only, the salary is usually inclusive of clerical assistance and office rent, but frequently stationery, forms, books, etc., are provided by the standing joint committee.

(f) A refusal to vary a salary is a decision against which an appeal can be made (*R. v. Home Secretary, Ex parte Essex Standing Joint Committee* (1921), 86 J. P. 49).

question of varying the salary at a meeting of which special notice must be given (g).

Minor functions of the standing joint committee are :—

- (1) As police authority, the making of regulations under sect. 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916 (h), with respect to the places where and the conditions under which persons may be permitted to collect money for charitable or other purposes in any street or public place, and the granting of licences under the House to House Collections Act, 1939 (i).
- (2) The execution of the duties of a county council under Part I. of the Betting and Lotteries Act, 1934 (k), if the county council elect to delegate their functions to the standing joint committee (*ibid.*, sect. 5 (1) (c)); in such case the committee is bound to discharge these functions so long as the delegation is in force (*ibid.*, sect. 5 (2)) and the expenses of so doing must be defrayed by the county council (*ibid.*, sect. 5 (4)). By sect. 5 (5) a standing joint committee to whom functions are delegated may combine with other standing joint committees or councils in delegating the functions to a joint committee consisting of members of the constituent councils or standing joint committees. [656]

III. Application of the L.G.A., 1933 (l), and Standing Orders.—The application to standing joint committees of certain provisions of the L.G.A., 1933, is not entirely free from doubt; the standing joint committee is mentioned specifically in sects. 157, 159 discussed *infra*, and is clearly included in the scope of sect. 294, which authorises payment of the travelling expenses of members; the county council is responsible for payment of travelling expenses of members appointed by the quarter sessions.

The provisions of Part II. of the L.G.A., 1933, as to disqualification of members are applied by sect. 94 to members of joint committees appointed by agreement between a local authority and any other local authorities; the expression "local authority" as defined by sect. 305, *ibid.*, does not include quarter sessions, and therefore, apart from any question which may arise as to the meaning of the words "by agreement" in sect. 94, it seems clear that the provisions as to disqualification of members do not apply directly to members of the standing joint committee; but as membership of the county council is a necessary qualification for office so far as relates to the county council quota of the committee, any member of the county council, who is disqualified for membership of that body, cannot be appointed or remain as a county council member of the standing joint committee.

The position with regard to disability for voting on account of interest in contracts (L.G.A., 1933, sect. 76) is rather more obscure; sect. 95 of the Act of 1933 applies sect. 76, *ibid.*, to joint committees in terms similar to those used in sect. 94 (*supra*) and, *prima facie*, the standing joint committee does not appear to be included, but the decisions of the standing joint committee commit the county council to the making or receipt of payments, and any county council members of the standing

(g) Nothing is laid down as to the special notice; *semeble*, a reasonable notice stating that the question will be considered is sufficient.

(h) 12 Halsbury's Statutes 865.

(i) 32 Halsbury's Statutes 110.

(k) 27 Halsbury's Statutes 271.

(l) 26 Halsbury's Statutes 295.

joint committee who have a personal interest in the contracts of the committee are participating in a bargain which will bind the county council. On the other hand, it must be remembered that sect. 76 of the L.G.A., 1933, is aimed at the actions of members present at a meeting of the authority, and sect. 95 applies sect. 76 only to those committees, sub-committees and joint committees which can be included within the words of sect. 76 ; it would appear, therefore, that the provisions of sect. 76 are not applicable to any member of the standing joint committee acting as such. However, despite the non-application of the penal provisions of sect. 76, it is in every way desirable that any member of a standing joint committee who is interested in a contract of the committee, should disclose his interest and should abstain from speaking and voting thereon.

The application to standing joint committees of sect. 266 of the L.G.A., 1933 (contracts and standing orders relating thereto), is complicated by the facts that the standing joint committee is not a body corporate, has no common seal, cannot take a conveyance of land and can only sue or be sued by or through representative members ; in consequence, the contracts of the committee must either be made under the hand of an individual acting as agent (*e.g.* the chairman, the clerk or the chief constable), or must become contracts of the county council, under the seal of the council. The better opinion appears to be that with regard to contracts made by the standing joint committee under the hand of an agent, the standing orders made by the county council for the purposes of sect. 266 (*supra*) do not apply, but if it is intended that the county council should be a party to the contract, the standing orders apply ; there is, however, some authority for the view that in entering into a contract for purposes required by statute to be executed through the standing joint committee, the county council is acting ministerially only. (See also "Relationship to County Council," *infra*.)

The power of a local authority to make standing orders for their committees is contained in sect. 96 of the L.G.A., 1933, and applies to joint committees in whose appointment local authorities concur ; in view of the fact that quarter sessions is not a local authority, it seems probable that the county council has no power of making standing orders which would bind the standing joint committee, and in the absence of any other specific statutory authority empowering a standing joint committee to make standing orders regulating its quorum, proceedings and place of meeting, it can only be assumed that any standing orders made by a standing joint committee for its foregoing purposes are either made under sect. 78 (3) of the L.G.A., 1888 (which in terms applies to county councils, and is limited in its operation to regulations or standing orders for certain purposes only, but was applied to standing joint committees for certain purposes by the decision in *Re L.G.A.*, 1888, *Ex parte Somerset County Council*) (*m*), or pursuant to a common law power, inherent in any organisation or association of individuals, of making rules for the regulation of its business. [657]

IV. Officers.—The clerk of the county council is clerk to the standing joint committee (L.G. (Clerks) Act, 1931, sect. 5 (4)), but the committee retains the power of appointing a deputy clerk under sect. 83 (4) of the L.G.A., 1888 (*n*), and, *semble*, an appointment made by the com-

(*m*) (1889), 58 L. J. (Q. B.) 518 ; 54 J. P. 183. See also footnote (*s*) at p. 418, *post*.

(*n*) Repealed only so far as relates to the deputy clerk of a county council (L.G.A., 1933, Sched. II.). A deputy so appointed holds office during the pleasure of the committee, and acts in lieu of the clerk in case of his death, illness or absence, or in

mittee would exclude from any functions in relation to the joint committee, the deputy clerk of the county council appointed under sect. 115 of the L.G.A., 1933. There is no statutory provision for the appointment of clerical or other staff. As to the position of the chief constable, see *infra*, at p. 414.

Sect. 123 of the L.G.A., 1933, relating to disclosure by officers of an interest in contracts does not appear to apply to the clerk or deputy, clerk of the county council when acting as clerk or deputy clerk to the standing joint committee, so far as the contracts of the committee are concerned, but so soon as the county council becomes a party to the contract, the clerk or any other officer of the county council must comply with the requirements of sect. 123. In practice, an officer would be well advised to give notice of his interest at the earliest possible moment, even though the contract is still in the hands of the standing joint committee. [658]

V. Relationship between the Standing Joint Committee and the County Council.—The matters mentioned in sect. 30 of the L.G.A., 1888, *supra*, are referred to the standing joint committee for determination, and the proceedings of the standing joint committee in dealing with such matters do not require confirmation or approval by the county council (*o*), or by quarter sessions, nor can the county council decline to make provision for payment of expenditure determined by the standing joint committee to be necessary for the purposes of sect. 30; moreover, by sect. 64 (3) of the L.G.A., 1888 (as amended by the L.G.A., 1933), the county council is required to provide such accommodation and rooms, and such furniture, books and other things as may from time to time be determined by the standing joint committee to be necessary or proper for the due transaction of quarter sessions business, and of the business of justices out of sessions, and of their committees, and for keeping their records and documents. Also, all costs incurred by county quarter sessions or by county justices out of sessions, and all costs incurred by any justice, police officer or constable in defending any legal proceedings taken against him, and arising out of the execution of his duty, shall, to such amount as the standing joint committee sanction, and so far as they are not otherwise provided for (*p*), be paid out of the county fund; the county council is required to make provision accordingly (L.G.A., 1888, sect. 66).

Sect. 29 of the L.G.A., 1888, provides a summary means of determining any question which arises or is about to arise as to whether any business, power, duty or liability is or is not transferred to any county council

such other cases as may be determined by the joint committee; as a standing joint committee is not within the definition of "local authority" contained in s. 305 of *ibid.*, *semel*, a deputy clerk appointed by the joint committee does not get the protection afforded by s. 121 of *ibid.* (Notice of termination of and retirement from appointments held during pleasure.)

(*o*) L.G.A., 1888, s. 75 (16) (f). The county council does not appear to be entitled to require the standing joint committee to report its proceedings to the council, but in practice a sufficient report must be presented to enable the county council to make the necessary financial arrangements and to order the common seal to be affixed to documents required to be sealed; such report is not open to discussion and does not require adoption, but the chairman of the standing joint committee is usually prepared (as a matter of courtesy) to reply to reasonable questions as to matters mentioned in the report.

(*p*) Cf. Licensing (Consolidation) Act, 1910, s. 29, as to payment out of the county or borough fund of costs of licensing justices in relation to appeals under s. 32, *ibid.*, on the order of quarter sessions.

or joint committee under the Act of 1888 ; without prejudice to any other mode of trying it, the question may be submitted for decision to the High Court on the application of the chairman of quarter sessions, or of the county council, committee or other local authority concerned, and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question (q).

The machinery of sect. 29, *supra*, was used in *Ex parte Somerset County Council* (r), when the court answered questions relating to the following buildings which appeared to have been transferred to and vested in the county council by virtue of sect. 64 of the L.G.A., 1888 :

- (1) A Shire Hall containing courts used for assizes, meetings of the county council, quarter sessions and petty sessions, high sheriffs' room, grand jury room, judges' lodgings and committee rooms.
- (2) Buildings physically connected with (1) and used as police officers' residences, cells and police barracks.
- (3) Courts used for similar purposes to those for which the Shire Hall was used, and also used for municipal and other meetings by a borough council.
- (4) Various petty sessional court houses, justices' rooms, police stations and lock-up houses.
- (5) The chief constable's official residence and police barracks.

The effect of the decision in the *Somerset Case* is that (1) the power and duty of managing, controlling, maintaining and repairing all buildings of the types mentioned above, which may be required by the standing joint committee for the provision of accommodation for the quarter sessions, or justices out of sessions, or for the use by them, or the police, or the clerk of the peace, or the clerks of the justices, or officers who serve both the quarter sessions or justices and the county council, is vested in the standing joint committee, and the committee is not subject to control in respect of these matters by the county council; (2) the duty of determining the necessity of acquiring additional buildings for such purposes is vested in the standing joint committee; (3) the standing joint committee have the power to repair, improve, erect and acquire county buildings, and approve plans and estimates for such purposes without previous application to or any intervention by the county council; (4) standing orders and regulations as to the management and control of the buildings under sect. 78 of the L.G.A., 1888 (s),

(q) A rule of the High Court dated August 10, 1892, provides that the summary proceeding for submitting any question for decision under s. 29, *supra*, shall be by special case agreed by the parties, or settled by an arbitrator in default of agreement, or settled by a Judge in Chambers ; a Judge in Chambers may appoint an arbitrator to settle the case. The special case is filed at the crown office department, by the chairman of quarter sessions or of the county council, within eight days from settlement, and is put into the Crown Paper for argument as if it were a case stated by justices under the Summary Jurisdiction Act, 1857. An appeal does not lie to the Court of Appeal (*Re Kent County Council* (1891), 55 J. P. 647) ; the court will decline to answer vague and speculative questions ; the questions must be based on cases which have actually occurred (*Re Cardigan County Council* (1890), 54 J. P. 792).

(r) (1889), 58 L. J. (Q. B.) 513 ; 54 J. P. 183.

(s) The *Somerset Case* is occasionally referred to as authority for the proposition that a standing joint committee has a general power of making standing orders for the regulation of its business, but this interpretation of the decision appears to be of doubtful validity. In the course of his judgment, MATHEW, J. said, after reading Question 5, "Power appears to me to be conferred on both parties ; and they may

may be made by the county council and also by the standing joint committee in relation to matters within the province of either body respectively.

In the course of his judgment in the *Somerset Case*, MATHEW, J. said : "The duty of the joint committee is to say what expenditure shall be required, and then, upon requisition, the county council are to supply the funds, and it is the duty of the county council to obey the requisition made."

The *Somerset Case* was referred to with approval in *Standing Joint Committee of the County of London v. L.C.C.* (*t*).

In *Ea parte Leicestershire County Council* (*u*), it was held that the power of dividing a county into police districts, under sect. 27 of the County Police Act, 1840, vests in the standing joint committee, and not in the county council.

It should be observed that under sect. 30 (3) of the L.G.A., 1888, the duty of making provision for meeting the expenditure determined to be required by the standing joint committee, is imposed on the county council, and it is for the county council to decide how such expenditure shall be financed, *i.e.* by loan or out of revenue. [659]

VI. Relationship between the Standing Joint Committee and the Chief Constable.—The appointment and dismissal of the chief constable is a function of the standing joint committee (see titles CHIEF CONSTABLE and COUNTY POLICE), but the committee cannot intervene in the exercise by the chief constable of his statutory functions, wherein he is a servant of the Crown. Speaking generally, the standing joint committee is responsible for providing all things necessary for the efficient conduct of police functions in the county, and it is for the chief constable to see that such functions are duly carried into effect. For a detailed statement of the powers and duties of the standing joint committee in relation to the police, see title COUNTY POLICE (Vol. IV., at pp. 200, 201).

The chief constable should have access to all meetings of the committee, and of sub-committees, at which police matters are considered. Apart from certain statutory payments (*e.g.* under the Costs in Criminal Cases Act, 1908), the county council is only required to meet expenditure on police services to the extent to which it is determined to be required by the standing joint committee under sect. 30 (3) of the L.G.A., 1888,

conflict with each other. If they should, no doubt the question will arise as to which order shall be obeyed ; and the courts, I trust, when that question arises, will have no difficulty in saying what the proper decision ought to be." It is clear that in this part of his judgment, MATHEW, J. had in mind only the limited class of standing orders, etc. referred to in the questions submitted to the court ; moreover the Order of Court refers specifically to s. 78 of the L.G.A., 1888, and s. 78 is not a section giving a general power of making standing orders, but relates only to standing orders intended to obviate difficulties arising from the requirements as to procedure contained in statutes relating to transferred functions.

(*t*) (1911), 75 J. P. 455. This case turned upon the interpretation of s. 40 (6), (7) of *ibid.*, which confers on the L.C.C. special powers as to schemes relating to the holding of quarter sessions in the county of London ; it was held that in London the power of determining the places at which the London quarter sessions should be held is vested in the L.C.C., subject to the approval of the Home Secretary, and not in the Standing Joint Committee, and that the power of deciding whether any and what new sites for the accommodation of quarter sessions should be acquired vests in the L.C.C. ; but that the power of determining what accommodation should be provided on the sites so acquired vests in the Standing Joint Committee, and the accommodation requisitioned by the committee must be provided by the L.C.C. The position in London thus differs from that in England and Wales generally.

(*u*) (1891), 55 J. P. 87.

or under sect. 66 (costs of certain legal proceedings). The chief constable must, therefore, report his proposals for expenditure, and also his actual expenditure in sufficient detail to enable the committee to determine whether such expenditure is required. As a matter of practice the chief constable is given a very free hand with regard to expenditure of a routine nature, but an officer who exceeds or departs from estimates of expenditure previously approved by the committee does so at the risk of such expenditure not being met by the county council.

As to disciplinary action against a chief constable, and compulsory retirement under sect. 1 of the Police Pensions Act, 1921, see title CHIEF CONSTABLE (Vol. III., at pp. 151—153). On an appeal by the chief constable of a county to the Home Secretary under the Police (Appeals) Act, 1927, the standing joint committee is the respondent. *Semblé*, in the event of disciplinary action to which the above statute does not apply it might be possible to obtain an inquiry to which the Tribunals of Inquiry (Evidence) Act, 1921, could be applied (v).

[660]

VII. Acquisition of and Dealings in Land.—Sect. 64 of the L.G.A., 1888, vested in the county council (w), all property of the quarter sessions of a county, or held by the clerk of the peace, or any justice or justices of a county, or treasurer or commissioners or otherwise for any public uses or purposes of a county; in the case of property held or used for purposes within the purview of the standing joint committee the effective control of the property vests in that committee (x). The acquisition, appropriation and disposal of land required or held for the purposes of the standing joint committee is now effected under Part VII. of the L.G.A., 1933 (y), and by sects. 157 and 159 of that Act the powers of acquisition by agreement and by compulsion thereby conferred are, in the case of a county council, expressed to include acquisitions for the purpose of functions exercised through the standing joint committee (z). The expression "land" used in Part VII. of the L.G.A., 1933, includes any interest in land and any easement or right in, to or over land (L.G.A., 1933, s. 305) and, therefore, although contracts for the acquisition of land may be entered into on behalf of the standing joint committee by an agent acting on their behalf, any conveyance or other assurance of the land must be made to the county council; but in all dealings in land held, or proposed to be held, for the purposes of the standing joint committee, the county council must comply with the requirements of the committee and in effect acts ministerially. There is, however, a possible exception to the foregoing statement, namely, the position which arises when the standing joint committee desires the county

(v) 8 Halsbury's Statutes 256. Cf. the case of the Chief Constable of St. Helens (a Borough case) noted in title CHIEF CONSTABLE (Vol. III., at p. 152).

(w) See s. 64 (4), (5) of the L.G.A., 1888, as to the vesting of transferred property in the counties of Sussex, Suffolk, York and Lincoln.

(x) *Ex parte Somerset County Council*, ante, p. 413.

(y) In some cases county councils provided houses for police officers as part of assisted housing schemes under the repealed s. 7 of the Housing, Town Planning, etc. Act, 1919, and the County Councils (Assisted Schemes for the Housing of Employees) Regulations, 1920 and 1924 (S.R. & O., 1920, No. 336, and 1924, No. 3); *semblé*, in such cases any dealings with land so acquired would, so far as authorised by the Housing Acts, be effected under the powers contained in those statutes (L.G.A., 1933, s. 179 (g) and Sched. VII.).

(z) It is understood that the H.O. take the view that compulsory acquisition cannot be resorted to where the purpose is to provide a police officer's residence as distinct from a police station.

council to proceed to acquire land compulsorily. A resolution of the county council is a necessary preliminary to the commencement of proceedings for compulsory acquisition ; and the better opinion seems to be that for this purpose the report of the standing joint committee requires adoption by the council, and is open to discussion and amendment, rejection or reference back. Alternative methods of compulsory acquisition available for standing joint committee purposes are, (1) application to the M. of H. for a Provisional Order under sect. 160 of the L.G.A., 1933 (22) ; and (2) proceedings under the Public Works Facilities Act, 1930 (a). [661]

VIII. Standing Joint Committees for Combinations of Counties and County Boroughs.—Sect. 81 (7) of the L.G.A., 1888, as amended by the L.G.A., 1933, authorises the appointment of a standing joint committee for two or more administrative counties, inclusive of county boroughs ; the members are appointed in such proportion and manner as the quarter sessions and councils concerned may arrange, or, in default of arrangement, may be directed by the Home Secretary. This power is useful in cases where arrangements are made for a county borough to be policed by the county police, or where two or more administrative counties are served by the same force, and may be of increasing utility in view of the growing importance of merging small police forces in larger units, and of combining the smaller forces.

In the case of a joint committee appointed under sect. 81 of the L.G.A., 1888, the councils and courts appointing the joint committee, jointly exercise the power of making, varying and revoking regulations respecting the quorum and proceedings of the joint committee, and as to the area within which it is to exercise its authority ; subject to any such regulations, the proceedings, quorum and place of meeting shall be as directed from time to time by the committee, and the chairman thereof has a second or casting vote. (L.G.A., 1888, sect. 82) (b). [662]

London.—Under the L.G.A., 1888, sect. 30 (c), a standing joint committee of quarter sessions and of the L.C.C. has been set up consisting of equal numbers of justices and members of the county council. The number of members appointed by the L.C.C. in 1937 was nine. Under the Act of 1888, the standing joint committee has the following duties :

- (i.) to appoint and remove the clerk of the peace ; and it may appoint and remunerate a deputy clerk of the peace (d) ; and
- (ii.) the determination of accommodation to be provided by the L.C.C. for the transaction of business of quarter sessions and of the justices and for the keeping of records, etc. (e) ; the determination of expenditure out of the county fund in respect

(22) See the Local Government (Compulsory Purchase) Regulations, 1934 (S.R. & O., 1934, No. 363) and Instructions as to Applications for Provisional Orders under s. 160 of the L.G.A., 1933, issued by the M. of H.

(a) See the Public Works Facilities (Procedure, M. of H.) Order, 1930, and the Public Works Facilities (Procedure, Home Department) Order, 1934.

(b) S. 82 of the L.G.A., 1888, is repealed by Sched. XI. (Part III.) to the L.G.A., 1933, except so far as it applies to joint committees appointed under s. 81 of the Act of 1888.

(c) 10 Halsbury's Statutes 708.

(d) L.G.A., 1888, s. 83 ; *ibid.*, 753.

(e) *Ibid.*, s. 64 (3) ; *ibid.*, 738.

of costs, etc. (f); exercising the powers of quarter sessions, justices and a local authority as to salaries and fees of clerks of petty sessional divisions (g).

The L.C.C. (General Powers) Act, 1930, Part IV., makes provision as to the remuneration, appointment and superannuation of the clerk of the peace and his staff. The staff became officers of the standing joint committee on January 1, 1931, and that committee has power of appointment of staff instead of the clerk of the peace. [663]

(f) L.G.A., 1888, s. 66; 10 Halsbury's Statutes 740; see also s. 41 (5) (City to contribute); 10 Halsbury's Statutes 721.

(g) *Ibid.*, s. 84; *ibid.*, 755.

STANDING ORDERS

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*See also titles : CONTRACTS (and titles there referred to);
MEETINGS (and titles there referred to).*

Preliminary.—In this title the term "local authority" has the meaning assigned to it by sect. 305 of the L.G.A., 1933 (a), that is to say, a county council, borough council, district council or a parish council, but it does not include a joint board (b) or a parish meeting.

The proceedings and business (including the making of contracts) (c) of a local authority, apart from statutory provisions, are governed by standing orders (d).

A council appointing a committee and councils who concur in appointing a joint committee may make, vary, and revoke standing orders respecting the quorum, proceedings and place of meeting of the committee or joint committee (e).

Most questions upon standing orders which have come before the courts will be found to have arisen because of loose or inconsistent draftmanship; it is fatal to bring together clauses from varying sources without scrupulous examination of the whole. [664]

How Made.—Standing orders may be made by the council at any meeting duly convened and held under the rules set out in Sched. III., Part V. They are delegated legislation under the Act and are made subject to the provisions of the Act. They are, therefore, *ultra vires*

(a) 26 Halsbury's Statutes 465.

(b) See, however, s. 293 as to application of Act to joint boards, etc.

(c) See ss. 76 (a), 96, Sched. III., Part V. (1).

(d) S. 266. See *post*, p. 421.

(e) S. 96 (1).

so far as they conflict with the Act. They are entirely under the control of the council and cannot restrict its powers. Para. 1 of Part V. of the Schedule, provides that, subject to certain exceptions, all questions coming before a local authority shall be decided by a majority of the members present and voting. A standing order providing for a different majority would be *ultra vires*. [665]

Relating to Meetings and Proceedings.—Meetings and proceedings of local authorities and their committees are regulated particularly by the rules contained in Sched. III., Part V. of the Schedule which, however, may be amplified by standing orders made under rule 4. This rule provides that the conduct and procedure of meetings and proceedings may be controlled by standing orders, which take effect subject to the provisions of the Act, and which a local authority may also vary or revoke. Such standing orders regulate in more detailed manner the internal business of meetings in matters not specifically dealt with by the Act.

Standing orders vary in nature and scope according to the size, character and constitution of the local authority to which they apply. They should have regard to the general rights of members and particularly preserve the rights of minorities.

With Circular No. 1444 of December 31, 1934, the M. of H. issued a model series of standing orders for the guidance of local authorities (f), which form a serviceable and practicable code for adoption, with or without minor alterations to suit individual authorities of varying size and character. It was not suggested, however, that where a local authority's present standing orders were satisfactory and not in conflict with the Act they should be superseded by standing orders based on the model series. A variety of matters is dealt with in the model (g) which occupies eighteen pages (several of the clauses, however, being alternatives). They may be said to fall under four principal headings : (1) ordinary conduct of business ; (2) interest of members and officers ; (3) appointment and procedure of committees ; and (4) conduct of financial matters. Attention is here called under each of the four main headings to the clauses of most interest. [666]

Ordinary Conduct of Business.—In clause 3 under the heading "Order of Business", is set out a standard procedure (which, however, the council may vary on the ground of urgency). Apart from items such as the choice of a chairman in the absence of the mayor, chairman or vice-chairman, and business given precedence by statute, it is provided that, after any item on the agenda has been disposed of, the order of the remaining business may be varied on a motion proposed from the chair (which need not be seconded) or a motion proposed and seconded. Such a motion is to be put to the vote without discussion.

Standing Order 19 provides for the admission of the public to meetings, subject to their temporary exclusion where the council deem it advisable in the public interest (h). Power is given by the order to the mayor, after a warning has been given, to order the removal of an interrupter or to order that "the part of the chamber open to the public be cleared."

(f) Copies may be purchased for 6d. at H.M. Stationery Office.

(g) See title MEETINGS, Vol. IX., p. 58, where there is an indication of the various matters dealt with.

(h) This applies to the public the rule which the Local Authorities (Admission of the Press to Meetings) Act, 1908 ; 10 Halsbury's Statutes 844, applies to the press.

Standing Order 18 (in conjunction with numbers 45 and 46) seems designed to prevent snatch decisions being obtained by a temporary majority.

The remaining orders govern the arrangement of business, the promulgation of motions, conduct of debate and other formal matters.

Some authorities have found it useful to adopt an order regulating deputations wishing to interview the council, by limiting the number to be received, the number to be heard, and the time to be occupied. [667]

Interest of Members and Officers.—Several clauses aim at securing disinterestedness. Members of a local authority who have a pecuniary interest in any matter under consideration and are therefore disabled from discussing it by sect. 76 of the Act are by model standing order No. 20 required to withdraw from the meeting, unless the disability has been removed by the Minister under sect. 76 (8), or unless they are expressly invited to remain.

Model standing order No. 22 is evidently designed to give effect to the main recommendations of the departmental committee on the Qualification, Recruitment, Training and Promotion of Local Government Officers, 1934, and where adopted will make canvassing by or on behalf of the candidate for any appointment a disqualification, and will require the purport of the standing order in this behalf to be included in every advertisement inviting applications for appointments or in the form of application itself. This represents what is already the practice of many local authorities. Further, by model standing order No. 23 a member of the council is not to solicit for any person an appointment under the council or recommend any person for appointment or promotion. Candidates for any appointment under the council are, where the model standing orders are adopted, required to disclose in writing whether they are related to a member or to a senior official of the council, and members and senior officials are required to disclose any relationship known to them between themselves and candidates. Some slight complaint of this provision has been made on the ground that it precludes the sons and daughters of members (for example) from obtaining employment, but the M. of H. expresses the view that it has not this result if they are qualified, although it precludes their obtaining an unfair advantage. The object is to ensure that where there is an interest it is within the knowledge of the local authority as a whole. Relationship of a candidate to a member of the council is treated as constituting an interest in the matter under discussion within the meaning of the standing order already quoted, which obliges the member to withdraw when the appointment is being discussed, unless specifically invited to remain. Model standing order No. 24 requires that vacant offices and the creation of new offices shall be advertised, unless they are to be filled by promotion or transfer, and that they shall not be filled without specific consideration by the general purposes or other appropriate committee, except in cases where the council are obliged by statute to fill the office. [668]

Appointment and Procedure of Committees.—Model standing order No. 31 makes express provision for the annual appointment and vacating of appointment of committees, and empowers the council to dissolve or alter the membership of a committee at any time. Although this power is inherent, local authorities will be well advised to regularise its exercise by standing order. (It is contemplated that a finance committee and general purposes committee will be amongst those appointed, and reference is made to the report of the Departmental Committee on

Local Government Officers as to an establishment committee.) By model standing order No. 39, a minimum of three or of a quarter of the total membership of the committee, whichever is the greater, is fixed as a quorum for committees, and by No. 42 the proposer of a motion which has been referred to a committee is given a right to attend, though not a member of the committee, and explain his motion. It is provided by model standing order No. 41 that the council's rules of debate (except those which require members to stand when speaking and forbid speaking more than once) are to apply to committees. This may be superfluous with small authorities. Other clauses in the model regulate the composition of, voting in, and quorum of committees.

One matter worth considering, though not provided for in the model series, except to the extent that model standing order No. 42 does so, as just mentioned, is that a member may attend meetings of any committee (of which he is not a member) without of course the right to vote or take part in the proceedings. [669]

Conduct of Financial Matters.—The model clauses relating to the conduct of financial matters should be considered in conjunction with those dealing with contracts (i). Model standing order No. 18 directs that all proposals which, if carried, would materially increase expenditure are, unless moved upon a recommendation or with the concurrence of the council's finance committee, to stand adjourned as soon as seconded to the next ordinary meeting of the council. Any committee is to have the right, and the finance committee is to have a duty, to report on the proposals. Model standing order No. 43 provides that accounts for payment and claims upon the council are not to be laid before the council until recommended by the committee, if any, having charge of the business to which they relate, or by the finance committee; but provision is made for special urgency payments between meetings, and these, together with payments which under statutory authority may be made without an order of the council, are to be separately scheduled for the council's information.

Model standing order No. 44 requires estimates from every spending committee to be based upon a quarterly return from the council's chief financial officer of the quarter's expenditure and revenue. No committee is to incur expenditure without an estimate.

If adopted, the standing orders referred to will to some extent assimilate the procedure of all local authorities and committees to that laid down by the Act of 1933 for the councils of boroughs and counties. [670]

Other Matters.—A matter which has from time to time caused difficulty is that of inspection of documents. A right of inspection limited to the accounts is given to members of local authorities by sect. 283 (3) of the Act (k), and there has been controversy and litigation on the question what further right exists. Model standing order No. 29 gives a right to every member to inspect for the purposes of his duty (but not otherwise) any documents which have been considered by a committee or by the council, subject to a proviso precluding his so doing (even for the purposes of his duty as a councillor) if he has any professional or pecuniary interest in the subject matter, or if the document would in the event of legal proceedings be protected by privilege.

Model standing order No. 30 provides that a member of the council, unless authorised to do so by the council or a committee, shall not inspect any lands or premises which the council have a right or duty to inspect, or enter upon or issue any order respecting any works which are

(i) See *post*, p. 421.

(k) 26 Halsbury's Statutes 455.

being carried out by or on behalf of the council. A more comprehensive order adopted by some authorities with the same object in view runs : " Except when specially authorised by the council no councillor shall have power to act in any way by virtue of his office except at a meeting of the council or of a committee or sub-committee." [671]

Suspension and Revocation.—As indicated, standing orders may be revoked or varied by a local authority at any meeting properly convened and of which due notice has been given. Doubt and difficulty have sometimes arisen concerning the power of a local authority to vary or suspend its own standing orders, and alteration and suspension have frequently been confused in practice. The utility of standing orders is impaired if they are open to ill-considered or too frequent alteration, and they might be almost useless if suspension were taken as a matter of course. The model standing orders therefore require that any motion to alter a standing order shall when proposed and seconded stand adjourned without discussion until the next ordinary meeting of the council, and that for any motion to suspend a standing order at a particular meeting there shall, unless a motion in that behalf has been served in advance upon all members, be required a quorum greater than is necessary for ordinary purposes (l). [672]

Standing Orders Relating to Contracts.—Contracts entered into by a local authority or a committee with delegated powers must be made in accordance with standing orders to be framed by the local authority (m). In effect this means that the council, if they had not already done so, were early in 1934 compelled to adopt standing orders with respect to contracts. Such standing orders must deal with certain matters, that is to say, in the case of contracts for the supply of goods or materials or for the execution of works, the standing orders must require that (except as otherwise provided by or under the standing orders) notice of the intention of the local authority to enter into the contract shall be published and tenders invited, and must regulate the manner of the publication and invitation (n).

For the assistance of local authorities the M. of H. has issued model or draft standing orders (o). The basis of the draft is sect. 174 of the P.H.A., 1875 (p) (repealed by L.G.A., 1933) (q), but the M. of H. has not hesitated to depart from it when to do so seemed expedient. That section governed all contracts made by town councils and urban district councils for the purposes of the P.H.As. and some other Acts to which the section has been applied, but did not govern other contracts of those authorities or the contracts of county councils, rural district councils and parish councils. All these different classes of local authorities (except the L.C.C.) are within the scope of L.G.A., 1933, sect. 266. It is realised that the practice of local authorities must necessarily vary to some extent according to the number and size of their transactions and according as they delegate the power of making contracts to a committee, which they may do under sect. 85 (1) of the

(l) See Model Clauses, 45 and 46, and see Annual Report of M. of H., 1934-1935, p. 197.

(m) S. 266.

(n) *Ibid.*

(o) These were issued with Circular 1388, dated March 28, 1934, together with a copy of s. 266 of the Act, and notes upon the Model Standing Orders. A copy may be purchased from H.M. Stationery Office or through any bookseller.

(p) 13 Halsbury's Statutes 698.

(q) See title CONTRACTS, Vol. IV., pp. 12, 13, 26.

Act, but the model series was prepared for the use of all local authorities. Some local authorities having many and complicated contractual transactions may probably need more elaborate standing orders. Departures, however, except for some good cause in the circumstances of a particular local authority, from the model are not recommended. There is an obvious advantage to local authorities themselves if contractors can rely on finding standing orders to be uniform in different districts.

It will be observed that the section provides that contracts must be in accordance with standing orders, but it is recognised that cases will arise when strict compliance with a rigid standing order is impossible or undesirable. In order to secure compliance with the statute the standing orders themselves must provide for exceptions.

For these necessary exceptions, of whatever kind, clause 1 of the model standing orders provides machinery in alternative forms. The simplest, which may be adequate where a local authority (for example, a parish council) finds that its business does not call for setting up committees, allows the council itself to make an exception in emergency, but the exception and the emergency justifying it are to be noted in the minutes. ("Emergency" presumably may be taken as meaning any circumstances not foreseeable at the time of the adoption of the standing order by the local authority.) Four other forms of this clause are given. The first, like sect. 266, itself, but differing from the simplified clause last mentioned, contemplates the practice of delegating to committees the power of making contracts and merely reserves to the council, without further formality, the power of directing exceptions, even though there be no emergency. The second allows an exception by a committee enjoying delegated powers, but only in an emergency. If exception is desired in a case other than an emergency, the direction of the council is required. The third form of the clause is more elaborate; neither a committee nor the council itself can, save in an emergency, make an exception without a report from a special committee. This alternative and the one which follows assume the existence of a standing committee of the council within whose purview come all the functions of the council. This, it is suggested, may be the general purposes committee, where it is a definite committee (and not the council as a whole sitting in private), or if there is no other appropriate committee, the finance committee. If there is no existing committee suited for the task, one of the earlier alternatives is recommended. It is important, in view of suggestions sometimes made, to notice that the circular does not advise a special "contracts committee" of the council.

The last form of the clause provides for delegation of the power of making exceptions by the council to its general purposes or other appropriate committee, that is, as already explained, to some existing committee other than that which makes the contract. All the alternatives require each exception (except in case of emergency, when the latter committee may direct an exception) and the emergency justifying it to be recorded in minutes of the council or the report of a committee, not merely in committee minutes, which (as such) would not be available to all members of the council.

The circular does not advise which of the five forms given in the model standing orders is the best. The experience of each local authority will guide its choice, but one or other of the alternatives should apparently meet any case.

Clause 2 requires the council, before entering into a contract for any

work, to obtain from the appropriate officer or other person (*r*) an estimate of the probable expense of the work.

Clause 3 of the model is directed to that part of sect. 266 which provides that in case of contracts for the supply of goods or materials or the execution of works, the standing orders must, except as otherwise provided in or under them, require antecedent public notice and invitation to tender. The model form requires that for every contract to which this part of the section applies and which exceeds £100 in value, at least ten days' public notice shall be given. The notice is to be inserted in the newspapers and also (another innovation) whenever the value exceeds £1,000 (*s*) is to be inserted in one or more trade journals (with the object of reaching the firms best qualified to tender). Presumably the value will be determined by the estimate prepared under clause 2. The model standing order is not appropriate in a case (a) where the goods or materials to be purchased are proprietary articles or sold only at a fixed price; (b) the materials required are obtainable only from a limited number of contractors; (c) the prices of the goods are controlled by trade organisations, or there would be no genuine competition; (d) the work to be executed or goods to be purchased are a matter of urgency; or (e) such work or goods consist of repairs to, or parts of, existing machinery; and the standing order could aim at meeting such cases, or some of them, by appropriate exceptions. With such specified exceptions and with a suitable figure inserted in the first line, the clause would permit routine purchases and special purchases for cash without recourse to an exception in pursuance of clause 1 (*t*).

Model clause 4 provides that tenders are to be in closed envelopes to remain in the custody of the clerk to the council (*u*), and to be opened only by such members of the council as have been designated by the council or committee for that purpose, in the presence of the clerk or other official. This clause is designed to prevent leakage (or what is nearly as damaging—suspicion of leakage) of information.

Clause 5 requires that before a council accept any tender other than the lowest (or, of course, the highest if payment is to be received by the council) they shall consider a report from the appropriate officer or other person.

Model standing orders 6 and 7 closely follow the repealed sect. 174 of the P.H.A., 1875, in requiring contracts over £50 to be in writing and to specify the work, materials, matters or things to be furnished, had or done, the price to be paid, and the time for performance. It is to be noted that any discounts or other deductions are to be specified. Every contract of more than £100 in value for the execution of works or the supply of goods otherwise than at one time is to provide for a pecuniary penalty and for the taking of security. The figures mentioned are only suggestions and the local authority itself must consider what figure is appropriate in the circumstances.

(*r*) This admits of a report from a consulting engineer or similar person.

(*s*) Local authorities who rarely enter into contracts of £1,000 or over, such as parish councils, may usefully insert a lower figure.

(*t*) See, however, the "strong opinion" against inviting tenders from selected firms alone, at p. 93 of the Annual Report for 1928–1929 of the M. of H.; also the "strong objection," expressed at p. 167 of the Annual Report for 1932–1933, to specifying proprietary articles; and reference to the Committee on Standardisation, at p. 210 of the Annual Report for 1933–1934.

(*u*) The M. of H. is of opinion that tenders and deposits paid by contractors in tenders should be returnable to the clerk to the authority, who should account for any deposit which is paid and for any security given for the performance of the contract. (See M. of H. Circular No. 1444, December 31, 1934.)

Clause 8 requires that all contracts shall so far as practicable require goods and materials used in their execution to be of United Kingdom or Empire production, and clause 9 similarly requires that contracts shall stipulate for British Standard specifications where these exist and are appropriate. The effect of this, in conjunction with clause 1, will be that if a committee making contracts wishes to depart from the British standard specification in any instance or to authorise the contractor to do so, it must obtain the approval of the council or of the appropriate committee according to the council's arrangement.

Clause 10 which follows with necessary adaptation the stock contract of Government departments, provides that a local authority will obtain from the contractor himself a contractual right to terminate the contract if he shall have offered or given or agreed to give any gift of any kind as an inducement for obtaining the same or any other contract. Further, the contract may be cancelled if any other person has done so on his behalf even without his knowledge; and in any case of cancellation he must bear the loss. It will be observed that if a gift be offered, even if not accepted or even if not effective in securing the contract, a subsequent contract, however legitimately secured, may be cancelled on account of the original unsuccessful effort. The giving of a fee or reward, the receipt of which is an offence under sect. 123 (2) of the Act of 1933, is also made a ground for cancellation.

If this standing order be adopted it will go far to meet the deficiencies of the Prevention of Corruption Acts by placing a power in the hands of the local authority which, if firmly exercised, will virtually oblige every contractor to be an insurer against all attempted corruption.

Clause 11 provides for the insertion of a fair wages clause in a form following the fair wages resolution of the House of Commons.* Local authorities may already have a form framed to meet their own requirements, but in any case where Exchequer money is payable they must be sure that their own clause gives at least equal protection to workmen.

Some matters not provided for in the model standing orders may be worth the consideration of local authorities, e.g. requirements (a) for the obtaining of a quotation for goods over £10 in value; (b) for conformity to a definite specification in case of all tenders; (c) for a successful contractor to be entitled to use the seal of the National Scheme for Disabled Men.

Standing orders based on the model series and also dealing with the matters above mentioned would seem to meet the requirements of most authorities; but if any local authority desire to make standing orders outside the scope of, or on more elaborate lines than, the model series, they might refer to the very comprehensive series published by the L.C.C. (a), where precedents will be found covering a diversity of points too numerous to be mentioned here.

With regard to the applicability of standing orders made under sect. 266 to joint boards and joint committees, since that section does not apply to them it may be pointed out that a simple procedure is provided by sect. 293 for applying other sections of the Act to joint boards or joint committees constituted by order. As regards joint committees constituted by agreement, power is given in sect. 96, enabling standing orders to be made by the local authorities appointing them. It would seem desirable that the contracts of joint boards and

(a) Obtainable from P. S. King & Son, Ltd., 12 Great Smith Street, Westminster, S.W.1, price 2s. 6d. The wording of any clauses from this series which it was desired to engraft on the model series would need examination by an expert draftsman, for the avoidance of inconsistency.

joint committees should be subject to the same requirements as those of their constituent bodies, and it is suggested that advantage might be taken of the procedure mentioned. [673]

Effect on Contract of Non-Compliance.—A person who enters into a contract with the council is not concerned to inquire whether the standing orders have been complied with, and any such contract if otherwise valid has full force and effect in spite of the fact that standing orders have not been complied with (b). [674].

(b) L.G.A., 1923, s. 266 (2); 26 Halsbury's Statutes 447.

STANDS

See SAFETY PROVISIONS OF BUILDINGS AND STANDS.

STATUES AND MONUMENTS

See ANCIENT MONUMENTS AND BUILDINGS; MEMORIALS, WAR AND OTHERS.

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See also titles :

BYE-LAWS ;
GOOD RULE AND GOVERNMENT ;
ORDERS ;

PROVISIONAL ORDERS ;
PRIVY COUNCIL.

Introduction.—It has apparently always been within the power of Parliament to delegate its authority, and while this power has generally been conferred on Ministers of the Crown, it may be so conferred on local authorities, statutory corporations and companies, universities, and representative bodies. The power, so far as is known, was first used in 1885 (*a*). It was occasionally used after that time, until in the nineteenth and twentieth centuries it became more and more frequent. In 1920, while the annual volume of general statutes occupied less than 600 pages, the two volumes of statutory rules and orders for the same period occupied five times as many (*b*).

The object of the delegated legislation is said to be to withdraw procedure and subordinate matter from the cognisance of Parliament and leave details to be settled departmentally (*c*). It is the tendency of modern legislation to lay down general rules and to avoid going into administrative details (*d*), and when once the delegated authority has been properly exercised by the agent to whom it is entrusted, the

(*a*) In an enactment concerning the Statutes. See Report on Ministers' Powers, 1932. Cmd. 4060, p. 13. Price 2s. 6d.

(*b*) *Ibid.*, p. 16.

(*c*) *Ibid.*, p. 24.

(*d*) See *National Telephone Co. v. Baker*, [1893] 2 Ch. 186 ; 42 Digest 782, 2117.

sanction is as much that of the legislature itself as if it had been expressed in the first instance in an Act of Parliament.

It is further pointed out in the Report on Ministers' Powers (*e*) that delegated legislation has been described under many names—regulations, rules, orders, warrants, minutes, schemes (*f*) and bye-laws, but the three names almost invariably given to those delegated to Ministers of the Crown (*g*) which are dealt with in this article, are regulations, rules, and orders. For powers given to subordinate authorities, see the title BYE-LAWS, and for delegated authority that is administrative, see ORDERS. Provisional Orders (*h*) are not delegated legislation, but are statutes drafted by a subordinate body and confirmed by Parliament. Orders in Council made in virtue of the Royal Prerogative are a class apart. They do not spring from statutory authority, and are not properly to be called statutory rules.

It is recommended in the Report on Ministers' Powers (*i*), that the expressions "regulation," "rule" and "order" should not be used indiscriminately in statutes to describe the instruments by which law-making power conferred on Ministers by Parliament is exercised. The expression "regulation" should be used to describe the instrument by which the power to make substantive law is exercised; and the expression "rule" to describe the instrument by which the power to make law concerning procedure is exercised. The expression "order" should be used to describe the instrument of the exercise of (i.) executive power, and (ii.) the power to make judicial and *quasi-judicial* decisions. In the Third Interim Report of the Local Government and Public Health Consolidation Committee (*k*), the committee say that in accordance with this recommendation they have substituted in their draft Bill the terms "Milk and Dairies Regulations" for the term "Milk and Dairies Orders" which occurs throughout the Milk Act of 1915, since these so-called orders are in fact elaborate codes of substantive law. They have also used the term regulations to describe the rules governing the use of special designations. [675]

Classification.—Delegated legislation by Ministers of the Crown takes one of two forms, either statutory orders in council, or departmental regulations. Instances of the former are the powers of H.M. by Order in Council to specify in an order an ancient monument for the injuring of which penalties may be imposed under the Ancient Monuments Act, 1913 (*l*); to apply to other substances the provisions of the Petroleum Consolidation Act, 1928 (*m*); and to transfer the duties of overseers under the R. & V.A., 1925 (*n*). Departmental Regulations may be divided as follows (*o*):

- (i.) Those required to be laid before Parliament, and those not so required.

(*e*) P. 16.

(*f*) For a "scheme" printed as S.R. & O., see the Central Valuation Committee (Constitution) Scheme, 1926 (S.R. & O., 1926, No. 1019); 14 Halsbury's Statutes 740.

(*g*) And some bodies such as the Unemployment Assistance Board or the Livestock Commission. See *post*.

(*h*) See Vol. X., p. 428.

(*i*) P. 64.

(*k*) 1937, Cmd. 5628, p. 12.

(*l*) S. 14 (4); 12 Halsbury's Statutes 399. See S.R. & O., 1913, No. 1265.

(*m*) S. 19; 13 Halsbury's Statutes 1184. See Calcium Carbide Order (S.R. & O., 1929, No. 992).

(*n*) S. 62 (1). See Overseers Order (S.R. & O., 1927, No. 55); 14 Halsbury's Statutes 770.

(*o*) Report on Minister's Powers, p. 29.

- (ii.) Those required to be sent to the King's Printer, and those not so required.
- (iii.) Those which are printed, and those which are not ; and
- (iv.) (a) Public and General, and (b) Local.

By sect. 4 of the Rules Publication Act, 1893 (*p*), "statutory rules" are defined for the purposes of that Act as "rules, regulations, or bye-laws made under any Act of Parliament which relate to any court in the United Kingdom, or to the procedure, practice, costs or fees therein, or to any fees or matters applying generally throughout England, Scotland or Ireland ; or (*q*) are made by H.M. in Council, the Judicial Committee, the Treasury, the Lord Chancellor of Great Britain, or a Secretary of State, the Admiralty, the Board of Trade, the M. of H. or any other Government department." [676]

Publication.—An annual volume of Statutory Rules and Orders has been published since 1890, and in 1894 those already published were arranged in alphabetical order under subjects and issued in thirteen volumes called the Statutory Rules and Orders Revised. Since then an annual volume so arranged has been published with an index at the end. At periods a collective index is issued. The last of such indexes was published up to July 31, 1936, and for later lists it is necessary to look in the index of the volume for the year.

By sect. 3 of the Rules Publication Act, 1893 (*q*), all statutory rules and orders must forthwith after they are made be sent to the King's Printer, and, in accordance with regulations to be made by the Treasury, be numbered, printed and sold. Numbers are given as a heading to each of the printed regulations with the year, *e.g.* S.R. & O., 1938, No. 1. Where they are required to be published or notified in the Gazette, a notice there that they have been made, with the place where they may be purchased, is enough to comply with the Act. The regulations were made in 1894 (*r*), and the annual volumes are prepared in accordance with them. All regulations made under Statutes or under Church Assembly Measures are to be included, but not :

- (i.) temporary rules which have ceased to be in force ;
- (ii.) those of local application (*s*) (a classified list of these is given at the end of each volume) ;
- (iii.) those not made by, but confirmed by, a rule making authority, *i.e.* bye-laws ;
- (iv.) those determined to be confidential ;
- (v.) those considered unnecessary by reason of their annual or other periodical renewal (*t*).

In Appendices to each volume are given the list of local regulations mentioned above and also tables showing the effects of the year's regulations on statutes and on previous published regulations of a public and general character. [677]

(*p*) 18 Halsbury's Statutes 1018.

(*q*) *Ibid.*, 1017.

(*r*) S.R. & O. (Rev.), XI., p. 1.

(*s*) *E.g.* those issued under the Fairs Act, 1873, s. 6 ; 11 Halsbury's Statutes 479, for altering the days of holding fairs ; under the Road Traffic Act, 1930, s. 46 ; 23 Halsbury's Statutes 643, for restricting the use of vehicles on specified roads ; and under the Bridges Act, 1929, s. 3 ; 9 Halsbury's Statutes 269, as to the reconstruction and maintenance of specified bridges.

(*t*) *E.g.* the Education Code.

Making of Regulations.—The chief difference in regard to the making of regulations is between those that are made and issued by a Minister in the ordinary course of his duties, and those that by the Statute which provides for their making must be laid before Parliament. The name of “Henry VIII. clause” has been given to sections in certain Acts which give a Minister power to modify the provisions of the Act so far as it may appear to him to be necessary for the purpose of bringing the Act into operation. The committee on Ministers’ Powers point out (*u*) that this has only been for the purpose of fitting its principles into the fabric of existing legislation. They comment also (*a*), on the many methods by which regulations may be laid before Parliament such as (i.) laying, with no further directions; (ii.) laying, where the regulations become annulled if within a specified time a resolution is passed; (iii.) laying, where the regulations must be approved by resolution; (iv.) laying in draft for a certain number of days; and (v.) laying in draft till approved by resolution. They say they see no reason for so many different forms and the Local Government and Public Health Committee recommend (*a*) that laying before Parliament should only be imposed in the case of regulations of substantial importance and of a legislative character; (*b*) that they should be liable to annulment by the ordinary procedure of an address by either House, and (*c*) that a uniform period, thirty days, should be fixed for this action (*b*). Effect was given to this recommendation in sect. 299 of the L.G.A., 1933 (*c*), and sect. 319 of the P.H.A., 1936 (*d*), which provide that where any regulation or rule made under the Act is required to be laid before each House of Parliament it must be laid for a period of thirty days during the Session of Parliament, and if an address is presented to His Majesty by either House of Parliament before the expiration of that period praying for its annulment, it is thenceforth void, though without prejudice to the validity of anything previously done thereunder or to the making of a new regulation or rule. In reckoning the period of thirty days no account is to be taken of any time during which both Houses are adjourned more than four days.

A different procedure is necessary in relation to regulations which are not to be liable to challenge in the courts (*e*). By sect. 204 (3) of the L.G.A., 1933 (*f*) (concerning the issuing of stock), regulations are to be made by the M. of H.; but before they are made, a draft must be laid before both Houses of Parliament, and the regulations must not be made unless both Houses by resolution approve the draft either without modification or addition or with modification or addition to which both Houses agree. When such approval is given the regulations may be made in the form in which they are approved, and are then deemed to be valid and within the power of the Act, and their validity cannot be questioned in any legal proceeding whatever. [678]

Publication of Draft Regulations.—Statutory provisions for the publication of draft rules made in pursuance of any Act which directs them to be laid before Parliament are made in the Rules

(*u*) P. 36.

(*a*) P. 41. See list of Statutes, *post*, p. 432.

(*b*) See Second Interim Report, p. 15.

(*c*) 26 Halsbury’s Statutes 464.

(*d*) 29 Halsbury’s Statutes 524.

(*e*) See *post*, p. 431.

(*f*) 26 Halsbury’s Statutes 416.

Publication Act, 1898, sect. 1 (g). This section does not apply to rules which, or a copy of which, are required to be laid before Parliament before they come into operation, nor to those made by the M. of H., the Board of Trade or the Revenue Departments, or by or for the purposes of the Post Office, nor to rules made by the M. of A. under the Diseases of Animals Acts (h). By sect. 1 (1) of the Act of 1893 (i), notice of the proposal to make rules which are to be laid before Parliament, and of the place where copies of the draft may be obtained, must be published in the *London Gazette* at least forty days before they are made. During the forty days any public body may obtain copies on payment of not exceeding 3d. per folio and any representations or suggestions made by an interested public body are to be taken into consideration by the authority before finally settling the rules (sect. 1 (2)). On the expiration of the forty days the rules may be made by the rule-making authority, either as originally drawn or as amended by the authority, and they will come into operation forthwith or as prescribed in the rules (*ibid.*). Illustrations are given in the Report on Ministers' Powers (k), of special safeguards for antecedent publicity in particular statutes, and it is pointed out that quite apart from statutory obligations, departments are naturally at pains to consult freely all interested bodies, where possible. It is thus increasingly customary before issuing regulations to circulate them in draft and to ask for comments on them from the associations of local authorities.

An inquiry may also be required under the Statute itself, e.g. the Factories Act, 1937, Sched. II., paras. 4 and 5; and in other cases a Minister may hold an inquiry if he thinks it necessary. Specific power to this end is usually to be found in modern statutes authorising the making of statutory rules and orders (l).

Where an Act is not to come into operation immediately after its passing, any power given in it to make regulations may be exercised, unless the contrary intention appears, at any time after its passing, so far as it is necessary or expedient for bringing the Act into operation, though any instrument made under the power is not to come into operation, unless the contrary intention appears, until the Act itself comes into operation (m).

Where an Act confers a power to make regulations, it is to be construed, unless the contrary intention appears, as including a power, exercisable in a like manner, to rescind, revoke, amend or vary them (n).

In certain cases a rule-making authority may certify that on account of urgency or for any special reason rules should come into immediate operation. They then come into operation forthwith as provisional rules, but only continue in force until others have been made in accordance with the Rules Publication Act (o). [679]

Validity.—Statutory rules and orders which have fulfilled all the conditions precedent have the force of statutes and must be construed as

(g) 18 Halsbury's Statutes 1016.

(h) S. 1 (4); *ibid.*, 1016. Further exceptions are made in later Acts; see index of Statutes under Rules Regulations Act.

(i) *Ibid.*

(k) Pp. 47, 48. See also s. 58 of the R. & V.A., 1925; 14 Halsbury's Statutes 679, and consultation with the Livestock Commission and the Poisons Board, *post*, p. 437.

(l) E.g. L.G.A., 1933, s. 290; 26 Halsbury's Statutes 459.

(m) Interpretation Act, 1889, s. 37; 18 Halsbury's Statutes 1005.

(n) *Ibid.*, s. 32 (3), p. 1003.

(o) Rules Publication Act, 1893, s. 2; *ibid.*, 1017. See *R. v. Baggalay*, [1913]

such (*p*). They are, however, different from statutes in that it is open to the judiciary to question their validity and examine if they have complied with conditions precedent and, if not, to quash them (*q*). They may be inoperative because they are *ultra vires* or inconsistent with the principles on which English law is based (*r*), but in the case in which this was held it was also stated that the validity of a rule could not be questioned if made in compliance with the Act giving power to make it (*s*). If, under the Act permitting them, they are to be placed before Parliament and are to be "of like effect as if they had been enacted in the Act," inquiry could not be made as to whether particular items were *ultra vires* or not, but only if the authority had power to make the regulations (*ss*). This was held to be different in regard to a scheme which had to be confirmed by a Minister (*t*), and was not to be confirmed by Parliament. In such a case, Viscount DUNEDIN said, "If one can find that the scheme is inconsistent with the provisions of the Act which authorises the scheme, the scheme will be bad, and that can only be gone into by way of proceedings in *certiorari*."

The Local Government and Public Health Consolidation Committee (*u*) recommend that the validity of all regulations, except those dealing with the issue of stock (*a*), to which special considerations apply, should be liable to challenge in the courts in the ordinary manner, and that provisions of the existing law giving regulations "effect as if enacted in the Act" should be omitted. This has been the rule in drafting statutes since the L.G.A., 1933. [680]

Interpretation of Regulations.—The construction of statutory rules and orders is dealt with in sect. 31 of the Interpretation Act, 1889 (*b*). This enacts that where an Act confers power to make any rules and regulations, expressions used in the instrument, unless the contrary intention appears, are to have the same respective meanings as in the Act conferring the power (*c*). The rules must be construed with reference to the provisions of the Act which authorises them (*d*). A number of cases have been decided on the construction of rules and regulations, most of them in connection with the rules of the Supreme Court (*e*). In one of these Lord ESHER said that the rule must be construed according to the ordinary meaning of the English language unless there was something in the context which showed that it ought not to be so construed (*f*). It has also been held that the rule must be reconciled with the Act which authorises it, but if it cannot be so reconciled the rule must give way to the plain terms of the Act (*g*). A rule made under

(*p*) *Willingale v. Norris*, [1909] 1 K. B. 57; 42 Digest 780, 2105, and others on p. 124 of 27 Halsbury's Laws of England.

(*q*) *Patent Agents Institute v. Lockwood*, [1894] A. C. 347; 42 Digest 751, 1755. See also *Mackay v. Monks*, [1918] A. C. 59.

(*r*) *Local Government Board v. Arlidge*, [1915] A. C. 120; 42 Digest 783, 2128.

(*s*) See *R. v. M. of H., Ex parte Yaffe* (1931), 95 J. P. 125, at p. 130; Digest (Supp.). See also [1931] A. C. 494.

(*ss*) *Ibid.*, at p. 502.

(*t*) *Ibid.*

(*u*) Second Interim Report, p. 16.

(*a*) See *ante*, p. 429.

(*b*) 18 Halsbury's Statutes 1003.

(*c*) See also s. 32 (3), *ante*, as to rescission, etc.

(*d*) *Richards v. A.-G. of Jamaica* (1848), 6 Moo. P. C. C. 381; 42 Digest 782, 2114.

(*e*) See 42 Digest 784—785.

(*f*) *Gebruder Naf v. Ploton* (1890), 25 Q. B. D. 13; 42 Digest 783, 2131.

(*g*) *Re Davis* (1872), 7 Ch. App. 526; 42 Digest 783, 2132, and *Hartmont v. Foster* (1881), 8 Q. B. D. 82; 42 Digest 783, 2134.

statutory powers should not, if another construction of it is possible, be construed as repealing or limiting the provisions of an Act of Parliament (*h*). [681]

Regulations in Statutes Relating to Local Authorities.—The following are the chief regulation-making powers which affect local authorities. (References will also be found in the relevant articles.)

Acquisition of Land.—By sect. 3 of the Acquisition of Land Act, 1919 (*i*), two sets of regulations are to be made. By sub-sect. (6) the fees to be charged in respect of proceedings before official arbitrators are to be prescribed by the Treasury (*k*), and by sub-sect. (7) rules relating to the procedure before official arbitrators are to be made by the reference committee (*l*), which is set up by sect. 1 (5) of the Act. Regulations as to compulsory purchase by local authorities have also been made under the L.G.A., 1938 (*m*). [682]

Allotments and Small Holdings.—See SMALL HOLDINGS.

Ancient Monuments.—As already stated (*n*) under the Ancient Monuments Consolidation and Amendment Act, 1913, Orders in Council may be made to apply the penalty for injuring ancient monuments to any monument specified in the order. [683]

Bridges.—Under the Bridges Act, 1929, the M. of T., in addition to a power to make local orders as to the reconstruction and maintenance of bridges, has (*o*) power to make rules as to matters preliminary to the making of orders under that Act. These rules must be laid before Parliament, with the usual form of annulment, within twenty-one days. [684]

Burial and Cremation.—Several regulating powers are given under the Burial and Cremation Acts. By sect. 2 of the Burial Act, 1852 (*p*), the Home Secretary is enabled to make representations for Orders in Council to be made for the discontinuance of burials in the metropolis. These orders are local. By sect. 1 of the Burial Act, 1853 (*q*), the same applied to cities and towns outside the metropolis, and by sect. 1 of the Burial Act, 1854, Orders in Council may be made to invest town councils with the power of providing burial grounds. By sect. 23 of the Burial Act, 1857 (*r*), Orders in Council may be made upon the representation of the M. of H. to prevent the use of vaults that are dangerous to health. Where persons having the care of a place of burial neglect to comply with Orders in Council, the churchwardens may be authorised by the Home Secretary to act in their stead (*s*).

Regulations as to the maintenance and inspection of crematoria are made by the Home Secretary under sect. 7 of the Cremation Act, 1902 (*t*). By sect. 10 of the Births and Deaths Registration Act, 1926 (*u*), this power includes a power to make regulations applying the provisions relating to registration to cases where human remains are disposed of

(*h*) *Perry v. London General Omnibus Co.*, [1916] 2 K. B. 385; 42 Digest 783, 2136.

(*i*) 2 Halsbury's Statutes 1179.

(*k*) See S.R. & O., 1931, No. 157.

(*l*) See S.R. & O., 1919, No. 1836.

(*m*) See S.R. & O., 1934, No. 363.

(*n*) *Ante*, p. 427. S. 14 (4); 12 Halsbury's Statutes 399.

(*o*) S. 10; 9 Halsbury's Statutes 273.

(*p*) 2 Halsbury's Statutes 190.

(*q*) *Ibid.*, 211. See also Burial Act, 1855, s. 1; *ibid.*, 218.

(*r*) *Ibid.*, 235.

(*s*) Burial Act, 1859, s. 1; *ibid.*, 238.

(*t*) *Ibid.*, 283. See S.R. & O., 1930, No. 1016.

(*u*) 15 Halsbury's Statutes 772.

by cremation. By sect. 9 (a) of the same Act (a), regulations are to be made as to the notice to be given to a coroner of an intention to remove a body out of England. The imposing of conditions and restrictions with respect to means of disposal otherwise than by burial and cremation formerly contained in sect. 9 (b) has now been included as sect. 161 of the P.H.A., 1936 (b), but no regulations under it have been made. [685]

Children and Young Persons.—The Home Secretary has power to make various rules under the Children and Young Persons Act, 1933, but none of these are to be laid before Parliament. Sect. 34 (c) of the Act gives power to make rules under sect. 29 of the Summary Jurisdiction Act, for applying the Summary Jurisdiction Acts and the Indictable Offences Act, 1848, to a summons for the purpose of enforcing the attendance at court of the parent or guardian of a child or young person charged with an offence (c). Sect. 78 gives power to make rules as to remand homes (d); sect. 81 as to approved schools (e); sect. 84 as to boarding out (f); and sect. 86 (4) gives power to the Treasury to direct how parental contributions collected for the care of children by fit persons should be applied (g). [686]

Cinematographs.—Regulations under the Cinematographs Act, 1909, are to be made by the Secretary of State by sect. 1 for securing safety, and by sect. 2 as to the terms and conditions of licences to be granted by county councils and county boroughs (h). [687]

Commons and Open Spaces.—The regulation of commons was, under the Common Acts, 1845 to 1882, by means of provisional orders (i), but a simpler method was set out in the Commons Act, 1899 (k), of a scheme according to regulations to be made by the M. of A. [688]

Diseases of Animals.—The Diseases of Animals Acts are some of those to which sect. 1 of the Rules Publication Act, 1898, does not apply (l). The Act of 1894 (m), by sect. 22, gives power to the M. of A. to make orders for the prevention and checking of disease, and many such orders have been made (n). Regulations may also be made under sect. 25 prohibiting the importation of animals; under sect. 27, for allowing foreign animals to be landed; and under sect. 30 for the regulation of ports. By sect. 29 every order made in pursuance of the Act in relation to the landing or conveyance of foreign animals must be laid before both Houses of Parliament. Other purposes for which orders can be made were added by the Diseases of Animals Act, 1903 (o), the Dogs Act, 1906 (p), and the Poultry Act, 1911 (q). By the Diseases of Animals Act, 1935 (r), all these powers were applied to poultry and the

(a) 15 Halsbury's Statutes 771. See S.R. & O., 1927, No. 557.

(b) 29 Halsbury's Statutes 438.

(c) 26 Halsbury's Statutes 194.

(d) *Ibid.*, 217. See S.R. & O., 1933, No. 987.

(e) *Ibid.*, 219. See S.R. & O., 1933, No. 774.

(f) *Ibid.*, 222. See S.R. & O., 1933, No. 787.

(g) *Ibid.*, 224. See S.R. & O., 1933, Nos. 1022, 1031; 1939, No. 13.

(h) 19 Halsbury's Statutes 352. See S.R. & O., 1923, No. 983, amended by S.R. & O., 1930, No. 361.

(i) See title PROVISIONAL ORDERS.

(k) Ss. 1, 14; 2 Halsbury's Statutes 607, 610. See S.R. & O., 1935, No. 840.

(l) *Anite*, pp. 433—434.

(m) 1 Halsbury's Statutes 400.

(n) See Index to Statutory Rules and Orders.

(o) S. 1; 1 Halsbury's Statutes 401.

(p) S. 2; *ibid.*, 351.

(q) S. 1; *ibid.*, 428.

(r) S. 1; 28 Halsbury's Statutes 8.

Minister was given power to make regulations as to veterinary therapeutic substances (s). [689]

Dog Racing—Totalisators.—In the First Schedule to Betting and Lotteries Act, 1934 (t), provisions are set out for regulating the establishment and operation of totalisators on dog racecourses. The conditions are to be prescribed by the Home Secretary. [690]

Education.—As already stated (u) the Education Code, published each year, is not printed in the volume of Statutory Rules and Orders. Under the Education Act, 1921, other regulations may be made in connection with the education of children on canal boats (v), the giving of assistance in the choice of employment (b), the expenses of educational conferences (c), and as to the requirement of birth certificates for certain purposes of the Act (d). [691]

Factories and Workshops.—Provisions as to regulations and orders to be made by the Home Secretary under the Factories Act, 1937, are contained in sect. 129 thereof (e), and sect. 115 (f) provides for the posting of printed copies of special regulations in factories and the giving of copies to persons affected. Regulations under the Act are divided into "general" and "special regulations," and the procedure for making special regulations is set out in the Second Schedule of the Act (g). Special regulations may be made under sect. 11 (h), requiring arrangements to be made for medical supervision in certain cases; under sect. 38 (i) requiring special safety arrangements for the prevention of accidents; and under sect. 46 (k) in regard to welfare. Publication under sect. 1 of the Rules Publication Act, 1893, applies only to regulations which are not special (l). All regulations are to be laid before Parliament (m) with the usual form of annulment within twenty-eight days. They may be made for a limited period and subject to any conditions the Home Secretary thinks fit, and unless otherwise expressly provided in the Act may be varied or revoked by subsequent orders. There are seventy-six cases in the Act in which regulations which are not special may be made; and any orders or regulations made under the former Factory Acts, are by sect. 159 (1) to continue in force till replaced (n). [692]

Food and Drugs.—In the Food and Drugs Act, 1938, the section of the P.H.A., 1936, as to the making of regulations is incorporated (o). The three principal sets of regulations are to be made by the Minister of Health and laid before Parliament. They are, sect. 8 (p), with regard to Food, replacing sect. 1 of the P.H. (Regulations as to Food)

(s) S. 12; 28 Halsbury's Statutes 12.

(t) 27 Halsbury's Statutes 296.

(u) *Ante*, p. 428.

(v) S. 50; 7 Halsbury's Statutes 158.

(b) S. 107; *ibid.*, 189. See also s. 18 of the Unemployment Assistance Act, 1934.

(c) S. 126; *ibid.*, 197.

(d) S. 137; *ibid.*, 202.

(e) 30 Halsbury's Statutes 288.

(f) *Ibid.*, 281.

(g) *Ibid.*, 305.

(h) *Ibid.*, 212.

(i) *Ibid.*, 234.

(k) *Ibid.*, 237.

(l) Factories Act, 1937, s. 129 (1) (c); *ibid.*, 288.

(m) *Ibid.*, s. 129 (1) (a); *ibid.*, 288.

(n) *Ibid.*, 302.

(o) *Ante*, p. 429. See s. 96; 31 Halsbury's Statutes 311.

(p) *Ibid.*, 257.

Act, 1907 ; sect. 20 (*pp*), Milk and Dairies, replacing sect. 1 of the Milk and Dairies (Consolidation) Act, 1915 (*q*) ; and sect. 30 (*r*), Bread and Flour, replacing sect. 2 of the Bread Acts Amendment Act, 1922. Other regulation making powers which must also be laid before Parliament are in regard to the composition of milk, sect. 23 (*s*), replacing sect. 7, Food and Drugs (Adulteration) Act, 1928 ; and prescribing the qualifications of public analysts, sect. 66 (*t*), replacing sect. 15 of the 1928 Act. Regulations formerly made by the Minister under the P.H. (Regulations as to Food) Act, 1907, in relation to imported food, and shell-fish, are now made under the 1938 Act (*u*). [693]

Highways.—See BRIDGES; RIBBON DEVELOPMENT; TRAFFIC. Under sect. 164 and Sched. I. of the Trunk Roads Act, 1936 (*a*), the M. of T. has modified the Schedule in respect of Trunk roads, and has made many orders in regard to special roads which have not been printed in the volume of Statutory Rules and Orders. [694]

Housing.—The M. of H. may by regulations under the Housing Act, 1936 (*b*), prescribe anything that under that Act is to be prescribed, and also the forms of notices and advertisements and other documents. All regulations must be laid before Parliament with the usual power of annulment within twenty-one days (*c*). Orders which have been made under the Act include the Housing Act (Forms of Orders and Notices) Regulations, 1939 (*d*), the Housing Act (Extinguishment of Public Rights of Way) Regulations, 1937 (*e*) and the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937 (*f*), all made under sect. 176 (1), while other regulations, including the Housing Acts (Equalisation Account) Regulations, 1936 (*g*), remain as made under earlier Acts till superseded (*h*). [695]

Livestock.—Various powers of making regulations are given to the M. of A. by the Livestock Industry Act, 1937 : by sect. 4, in regard to a subsidy to producers of fat cattle (*i*) ; by sect. 5 as to a form of approval for schemes (*k*) ; by sect. 6, in consultation with the Livestock Commission, with respect to the animals for which subsidy payments may be made (*l*) ; by sect. 4 for the marking of imported cattle (*m*) ; and by sect. 14 for an order excepting premises from the general regulations for holding livestock markets (*n*). In this connection note should be made of the Agricultural Produce (Grading and Marking)

(*pp*) 31 Halsbury's Statutes 266.

(*q*) These apply also to cream : see s. 27 of the Act of 1938 ; 31 Halsbury's Statutes 271, and S.R. & O., 1939, No. 1417.

(*r*) *Ibid.*, 271.

(*s*) *Ibid.*, 270.

(*t*) *Ibid.*, 293. S.R. & O., 1939, No. 840.

(*u*) Ss. 8, 81, 92 ; *ibid.*, 257, 304, 308. See S.R. & O., 1934, No. 1342.

(*a*) 29 Halsbury's Statutes 186. See S.R. & O., 1937, No. 211.

(*b*) S. 176 ; *ibid.*, 676.

(*c*) S. 177 ; *ibid.*, 677. See *ante*, p. 429.

(*d*) See S.R. & O., 1939, No. 30.

(*e*) See S.R. & O., 1937, No. 79.

(*f*) See S.R. & O., 1937, No. 80.

(*g*) See S.R. & O., 1936, No. 741. Made under s. 57 of the Act of 1930, and s. 46(1) of the Act of 1935. See also S.R. & O., 1939, No. 563, as to Forms of Charging Orders.

(*h*) S. 189 of the Housing Act, 1936 ; 29 Halsbury's Statutes 683.

(*i*) 30 Halsbury's Statutes 8. See S.R. & O., 1937, Nos. 658 and 1001.

(*k*) *Ibid.*, 9. See S.R. & O., 1937, No. 659.

(*l*) *Ibid.* See S.R. & O., 1937, No. 660.

(*m*) *Ibid.*, 8. See S.R. & O., 1937, No. 661.

(*n*) *Ibid.*, 13. See S.R. & O., 1937, No. 960.

(Beef) Regulations, 1931 (*o*), made under the Agricultural Produce (Grading and Marking) Act, 1928 (*p*). Sect. 11 of the 1937 Act gives power to the Board of Trade to regulate the importation of livestock and meat (*q*).

The power of making of regulations in the usual form as to annulment after thirty days (*r*), but sect. 1 of the Rules Publication Act, 1893, does not apply (*s*). The regulations made by the Board of Trade, however, become invalid unless approved by each House within thirty days (*t*). [696]

Local Government.—Provisions as to regulations to be laid before Parliament under the L.G.A., 1929, are contained in sect. 131 thereof (*u*), and are in the usual form as to annulment after twenty-one days. A large number of the regulations made under that Act are in connection with Government block grants under sect. 108 (*x*).

The provisions of the L.G.A., 1933, sect. 299 (*y*), and the special provisions with regard to stock regulations have already been given (*a*). Rules under that Act which must be laid before Parliament are those regulations; the election of county councillors and municipal councillors under the Second Schedule (*b*); district council elections under sect. 40 (*c*); parish council elections under sect. 54 (*d*); and parish meetings under sect. 47 (*e*), all of which are made by the Home Secretary. Those made by the M. of H. are regulations as to the qualifications and duties of M.Os.H. and sanitary inspectors under sects. 103 and 108 (including those under sect. 67 of the Housing Act, 1936 (*f*)); as to audit by sect. 235 (*g*); and as to polls for the promotion of bills under Sched. IX. (16) (*h*).

The M. of H. may confirm with or without modifications orders made by a county council under the L.G.A., 1933, s. 142 (*i*) as to alterations of areas; sect. 201 (*k*) as to conditions for loans to parish councils by county councils; sect. 205 (*l*) as to forms of mortgages; sect. 207 (*m*) as to register of mortgages; sect. 213 (*n*) as to sinking funds; sect. 267 (*o*) as to conferences; and Sched. IV. (11) (*p*) as to forms relating to compensation to officers. [697]

Land Drainage.—Under the Land Drainage Act, 1930, the M. of A. may make regulations as to notices and advertisements in regard to the

(*o*) See S.R. & O., 1931, No. 632.

(*p*) 1 Halsbury's Statutes 165.

(*q*) 30 Halsbury's Statutes 12.

(*r*) S. 8 of the Livestock Industry Act, 1937; 30 Halsbury's Statutes 11.

(*s*) *Ibid.*, s. 49 (2); *ibid.*, 36.

(*i*) *Ibid.*, s. 11 (3); *ibid.*, 12.

(*u*) 10 Halsbury's Statutes 970.

(*x*) *Ibid.*, 949.

(*y*) *Ante*, p. 429.

(*a*) *Ante*, p. 429. See S.R. & O., 1934, No. 619.

(*b*) 26 Halsbury's Statutes 474. See S.R. & O., 1934, No. 544.

(*c*) *Ibid.*, 325. See S.R. & O., 1934, Nos. 545, 546 and 972.

(*d*) *Ibid.*, 332. See S.R. & O., 1934, No. 1318.

(*e*) *Ibid.*, 328. See S.R. & O., 1936, No. 815.

(*f*) *Ibid.*, 360, 363; 29 Halsbury's Statutes 615. See S.R. & O., 1935, No. 1110.

See also as to Port Health Authorities in the P.H.A., 1936, *post*.

(*g*) 26 Halsbury's Statutes 435. See S.R. & O., 1934, No. 1188.

(*h*) *Ibid.*, 512. See S.R. & O., 1935, No. 1086.

(*i*) *Ibid.*, 382. See S.R. & O., 1934, No. 567.

(*k*) *Ibid.*, 416. See S.R. & O., 1934, No. 621.

(*l*) *Ibid.*, 417. See S.R. & O., 1940, No. 133.

(*m*) *Ibid.* See S.R. & O., 1934, No. 620.

(*n*) *Ibid.*, 420. See S.R. & O., 1934, No. 1320.

(*o*) *Ibid.*, 448. See S.R. & O., 1934, No. 690.

(*p*) *Ibid.*, 507. See S.R. & O., 1939, No. 283.

making of orders (q) ; by sect. 22 (3) (r) he may prescribe the form for the statement of the purposes for which a catchment board makes a precept ; by sect. 26 (s) he may prescribe forms for drainage rates and demands ; by sect. 33 (t) he may make rules for the election of members to drainage boards ; by sect. 49 (u) he may prescribe the form of report of proceedings by drainage boards ; and by sect. 55 (a) he may, with the approval of the Treasury, prescribe conditions for the making of grants and advances. By sect. 74 (b) all these regulations are to be laid before Parliament under the usual form as to annulment after twenty-eight days. General regulations have been made under the Act (c). [698]

Lunacy and Mental Deficiency.—By sect. 338 of the Lunacy Act, 1890 (c), the Board of Control are given power to make rules for carrying out the provisions of that Act, and this was extended by sect. 27 (2) of the Lunacy Act, 1891. They are to be laid before Parliament as provided for in sect. 15, Mental Treatment Act, 1930 (d). Under the Mental Deficiency Act, 1913 (e), the Home Secretary may make regulations for the management of institutes under that Act, which by sect. 68 (f) must be laid before Parliament with the usual form as to annulment within thirty days. In Sched. III. of the Mental Treatment Act, 1930 (g), matters are set out with respect to which rules may be made under that Act ; and by sect. 15 (h) the usual form by which they are to be laid before Parliament for twenty-one days subject to annulment is provided for, and also for the rules made under sect. 338 of the Lunacy Act, 1890, above. [699]

Markets and Fairs.—The orders made by the M. of H. to exempt certain markets and fairs from the Weighing of Cattle Acts are local and not printed in the volume of Statutory Rules and Orders (i). [700]

Petroleum.—Regulations may be made by the Home Secretary under the Petroleum (Consolidation) Act, 1928, in a number of cases, and by sect. 21 (k) all these must be laid before Parliament subject to annulment within forty days. They are, as to the conveyance of petroleum spirit by road, sect. 6 (l) ; as to the keeping of motor spirit for the purposes of vehicles, boats and aircraft, sect. 10 (m) ; and with regard to classes of petroleum spirit likely to be dangerous or injurious to health, by sect. 12 (n). By sect. 19, Orders in Council may be made applying the Act to other substances (o). [701]

(q) See Sched. II., Part I. (3) ; 23 Halsbury's Statutes 587. See also s. 42 (4) ; *ibid.*, 560.

(r) *Ibid.*, 545.

(s) *Ibid.*, 548.

(t) *Ibid.*, 553.

(u) *Ibid.*, 565.

(a) *Ibid.*, 569.

(b) *Ibid.*, 576.

(c) 11 Halsbury's Statutes 150. See S.R. & O., 1934, No. 54.

(d) 23 Halsbury's Statutes 182.

(e) S. 338 (6), (1) ; *ibid.*, 129.

(f) *Ibid.*, 194.

(g) 23 Halsbury's Statutes 176. See S.R. & O., 1935, No. 524.

(h) *Ibid.*, 168.

(i) See *ante*, p. 428. Markets and Fairs (Weighing of Cattle) Acts, 1887, s. 9, and 1926, s. 2 ; 11 Halsbury's Statutes 482, 485.

(k) 13 Halsbury's Statutes 1184.

(l) *Ibid.*, 1173. S.R. & O., 1939, No. 1209.

(m) *Ibid.*, 1176. S.R. & O., 1929, No. 952.

(n) *Ibid.*, 1178.

(o) *Ibid.*, 1184. See *ante*, p. 427, and S.R. & O., 1929, No. 992 ; S.R. & O., 1929, No. 993 ; and S.R. & O., 1930, No. 34.

Poisons.—By sect. 17 of the Pharmacy and Poisons Act, 1933 (*p*), the Poisons Board are to prepare a list of poisons, and this is to be confirmed and published by the Home Secretary. By sect. 23 (*q*), after consultation with the Board, he may make rules for carrying out the provisions of the Act. These must be laid before Parliament, with the usual form of annulment within thirty days (*r*). If the Board does not concur with his amendment or variations, he must place before Parliament a statement of his reasons. [702]

Police.—Regulations as to the government, pay, etc. of the police are made by the Home Secretary under sect. 4 of the Police Act, 1919 (*s*). These need not be laid before Parliament. They are reprinted at intervals with amendments that have been made (*t*). [703]

Public Assistance.—In the Report on Ministers' Powers (*u*), it is pointed out that by sect. 186 (1) (*a*) of the Poor Law Act, 1930, which follows the wording of the Act of 1834, the powers given are of the widest kind on matters of principle. These are to have effect as if enacted in the Act, subject to the power of the Minister to suspend, alter or rescind them. If the rule or regulation affects more than one authority it is to be a general rule, and every general rule must be laid before both Houses of Parliament as soon as may be after its publication, and His Majesty may by Order in Council disallow any entire rule or any part of it, which then ceases to have effect, but without prejudice to the validity of anything done under it. Every general rule made must be published in the *London Gazette* (*b*). [704]

Public Health.—The provisions as to regulations to be laid before Parliament in sect. 319 of the P.H.A., 1936 (*c*), have already been noted. They may be made as to the qualifications of medical officers of health and health visitors, under sect. 180 (*d*), in connection with tuberculosis and venereal diseases; under sect. 204 (*e*) in connection with maternity and child welfare; under Sched. I. (*f*) for port health districts; under sect. 143 (*g*) in regard to the treatment and prevention of infectious diseases; and under sect. 250 (*h*) in regard to canal boats. Those that need not be laid before Parliament are those relating to the investigation of smoke nuisance under sect. 105 (*i*); to charges for water under sect. 126 (*k*); to the disposal of dead bodies under sect. 161 (*l*); to the giving of lectures under sect. 179 (*m*); and to the forms of notices under

(*p*) 26 Halsbury's Statutes 573. See S.R. & O., 1935, No. 1238, amended by 1937, No. 1029, and 1940, No. 453.

(*q*) *Ibid.*, 579. See S.R. & O., 1935, No. 1239, amended by 1937, No. 1030, and 1940, No. 452.

(*r*) S. 26; 26 Halsbury's Statutes 582.

(*s*) 12 Halsbury's Statutes 868.

(*t*) See principal regulations for men S.R. & O., 1920, No. 1484, and for women 1933, No. 722.

(*u*) P. 31.

(*a*) 12 Halsbury's Statutes 1036. The chief regulations made are the Public Assistance Order (S.R. & O., 1930, No. 185); *ibid.*, 1053; the Relief Regulations Order, 1930, No. 186; *ibid.*, 1090; the Casual Poor Order, 1931, No. 136; the Public Assistance Accounts (County Council) Regulations, 1930, No. 29, and the Accounts (Borough and Metropolitan Borough) Regulations, 1930, No. 30.

(*b*) S. 187; *ibid.*, 1037.

(*c*) 29 Halsbury's Statutes 524; see *ante*, p. 429.

(*d*) *Ibid.*, 447.

(*e*) *Ibid.*, 463.

(*f*) *Ibid.*, 543.

(*g*) *Ibid.*, 427.

(*h*) *Ibid.*, 483.

(*i*) *Ibid.*, 402.

(*k*) *Ibid.*, 416.

(*l*) *Ibid.*, 438.

(*m*) *Ibid.*, 446.

sect. 283 (n). By sect. 346 (o) earlier regulations are continued until replaced. [705]

Rating.—As already stated (p), the Overseers Order which carried out the changes made by the R. & V. A., 1925, was an Order in Council. Other rules as to the forms, etc. of demand notes, valuation lists, etc., by sect. 58 of that Act (q), are to be laid before Parliament, with the usual form as to annulment after twenty-eight days. By sect. 34 (r) rules may be made by the Home Secretary with respect to appeals. By sect. 24 (s), the Minister of Health may make orders as to the rating of plant and machinery ; and by sect. 57 (t), after consultation with local authorities and associations of local authorities and organisations representing assessment committees he was empowered to make a scheme for the constitution of the Central Valuation Committee. By sect. 4 of the Agricultural Rates Act, 1929 (u), the Minister of Health is given power to make regulations, which must be laid before Parliament, as to certificates, entries, demand notes and notices under that Act. [706]

Registration.—The Registration (Births, Still-births, Deaths and Marriages) Consolidated Regulations, 1927 (a) and 1930 (b), were made in pursuance of powers under the Births and Deaths Registration Acts and Marriage Acts by the Registrar-General with the approbation and concurrence of the Minister of Health. [707]

Ribbon Development.—The most important regulations to be made by the M. of T. under the Restriction of Ribbon Development Act, 1935, are those prescribing standard widths under sect. 1 (c). See also the power of issuing "directions" (which are embodied in an order of the M. of H.) under sect. 17 (8) of that Act (d). [708]

Roads.—The regulations or orders made by the M. of T. in regard to roads besides those on ribbon development already mentioned are mainly local, such as those under sect. 5 of the Roads Improvement Act, 1925 (e), dealing with the prescription of building lines. Others relate to traffic under the Road Traffic Acts, 1930 and 1934, and those as to the Highway Code, speed limits and service vehicles. Under sect. 48 of the Road Traffic Act, 1930, and sect. 1 (8) of the Act of 1934 (f), however, many regulations in regard to traffic signs have been made. Important regulations may also be made under the Road Traffic Act, 1934, by sect. 18 as to foot passenger crossings (g) and by sect. 22 (h) as to the removal from roads of abandoned vehicles. [709]

Sunday Entertainments.—Sect. 1 of the Sunday Entertainment Act,

(n) 29 Halsbury's Statutes 505. (o) *Ibid.*, 541.

(p) *Ante*, p. 427. See S.R. & O., 1927, No. 55. See 14 Halsbury's Statutes 770.

(q) 14 Halsbury's Statutes 679, 736. See S.R. & O., 1926, No. 796 and the other rules, etc., made under this Act in the index to the Statutory Rules and Orders.

(r) *Ibid.*, 662, 798. See S.R. & O., 1927, No. 416.

(s) *Ibid.*, 650, 793. See S.R. & O., 1927, No. 480.

(t) *Ibid.*, 678, 740. See Central Valuation Committee (Constitution) Scheme (S.R. & O., 1926, No. 1019).

(u) *Ibid.*, 731.

(a) S.R. & O., 1927, No. 485 ; 15 Halsbury's Statutes 775.

(b) S.R. & O., 1930, No. 39 ; *ibid.*, 818.

(c) 28 Halsbury's Statutes 81. See S.R. & O., 1936, No. 161.

(d) *Ibid.*, 278. See S.R. & O., 1936, No. 777.

(e) 9 Halsbury's Statutes 223. See S.R. & O., 1927, No. 21.

(f) 23 Halsbury's Statutes 646, and 27 Halsbury's Statutes 537. See also s. 36 of the Act of 1934 ; *ibid.*, 562.

(g) *Ibid.*, 549.

(h) *Ibid.*, 552. See also s. 59 of the Act of 1930 ; 23 Halsbury's Statutes 654.

1932, may be extended to a borough or county borough by an order laid before Parliament and approved by a resolution passed by each House (*i*). The method of holding the poll is set out in regulations made by the Home Secretary. By sect. 2 (*j*), he is also empowered to make regulations as to the methods for transferring sums to the Cinematograph Fund. [710]

Superannuation.—Regulations for prescribing matters under the Local Government Superannuation Act, 1937, are by sect. 36 (7) (*k*) to be laid before Parliament, with the usual power of annulment within thirty days. Many regulations have already been made (*l*). [711]

Small Holdings and Allotments.—In regard to small holdings, the M. of A. was empowered by the Small Holdings and Allotments Act, 1926 (*m*), to make regulations for coming to the assistance of county councils for the provision of small holdings. These are to be laid before Parliament, under the usual power of annulment within twenty-one days. [712]

Shops.—By sect. 17 of the Shops Act, 1912 (*n*), the Home Secretary may make regulations for carrying out any of the provisions of that Act. By sect. 2 of the Shops Act, 1934 (*o*), he has power to regulate employment in spells. Regulations are also to be prescribed under sect. 4 of the Shops (Sunday Trading Restrictions) Act, 1936 (*p*), in the same way as under the Act of 1912 above (*q*). [713]

Town Planning.—Regulations made by the M. of H. under the Town and Country Planning Act, 1932, by sect. 37 (3) (*r*) have to be laid before Parliament subject to annulment within twenty-one days. These may be made with regard to procedure in connection with the preparation of schemes and orders (*s*), as to a general order in regard to interim development (*t*), as to compensation and betterment (*u*) and as to the saving of certain regulations existing at the time of the passing of the Act (*a*). [714]

Unemployment Assistance.—Regulations or rules under the Unemployment Assistance Act, 1934 (*b*), are to be made by the Board (except as to the superannuation of officers which are to be made by the Treasury (*c*), and confirmed by the Minister of Labour, and must then be laid before Parliament subject to annulment after twenty-eight days. Under sect. 38 (*d*), however, in regard to assessing the needs of applicants, the Board must make draft regulations and the Minister must lay them before Parliament, with reasons if he has altered them,

(*i*) S. 1 (5); Sched.; 25 Halsbury's Statutes 923, 926. See S.R. & O., 1932, No. 828.

(*j*) *Ibid.*, 924. See S.R. & O., 1933, No. 110.

(*k*) S.R. & O., 1939, Nos. 52, 57, 283, 329, 330.

(*l*) *Vide Index to Vol. III.*, Lumley's Public Health, 11th ed.

(*m*) S. 2 (*f*). See S.R. & O., 1927, No. 581.

(*n*) 8 Halsbury's Statutes 623. See S.R. & O., 1912, No. 316.

(*o*) 27 Halsbury's Statutes 228, 241. See S.R. & O., 1934, No. 1325.

(*p*) 29 Halsbury's Statutes 154. See S.R. & O., 1937, Nos. 271 and 1038.

(*q*) S. 15 (*i*); *ibid.*, 163.

(*r*) 25 Halsbury's Statutes 509.

(*s*) S. 37 (1), Sched. IV.; *ibid.*, 509, 533. See S.R. & O., 1933, No. 742.

(*t*) S. 10; *ibid.*, 482. See S.R. & O., 1933, No. 236.

(*u*) S. 23; *ibid.*, 501. S.R. & O. 1934, No. 778.

(*a*) S. 52 (2); *ibid.*, 520. See S.R. & O., 1933, No. 239. See also s. 43; *ibid.*, 512, and s. 47; *ibid.*, 518.

(*b*) S. 52; 27 Halsbury's Statutes 800.

(*c*) S. 51; *ibid.*, 799.

(*d*) Ss. 38 (2), 52 (2), (3); *ibid.*, 789, 800. See S.R. & O., 1936, No. 776; 1938, No. 806.

and each House must then approve them by resolution. Other regulations are as to availability for work (*e*), the determination of applications (*f*), the issue of allowances (*g*), and appeal tribunals (*h*). [715]

Weights and Measures.—Under the Weights and Measures Act, 1904, the Board of Trade may make general regulations as to weights and measures, which must be laid before Parliament (*i*), and these may confer on local authorities power to make regulations in their areas. This was extended to include regulations as to measuring instruments by sect. 2 of the Weights and Measures (Amendment) Act, 1926 (*k*), and for gas by the Gas Regulation Act, 1929 (*l*). [716]

(*e*) S. 36; 27 Halsbury's Statutes, 787.

(*f*) S. 39; *ibid.*, 790.

(*g*) S. 42; *ibid.*, 793.

(*h*) Sched. VII.; *ibid.*, 821.

(*i*) S. 5; 20 Halsbury's Statutes 409.

(*k*) *Ibid.*, 418.

(*l*) S. 12; 8 Halsbury's Statutes 1289.

STEAM ROLLERS

See ROAD TRAFFIC.

STEAM ROUNDABOUTS

See ROUNDABOUTS.

STEAM WHISTLES

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See also title: ROUNDABOUTS.

Steam Whistles.—By the Steam Whistles Act, 1872, sect. 2 (*a*), it is provided that no person shall use or employ in any manufactory or any other place any steam whistle or steam trumpet (*b*) for the purpose of summoning or dismissing workmen or persons employed without the sanction of the local authority (*c*), under a penalty of £5 and a daily penalty of 40s. The sanction so given may be revoked

(*a*) 8 Halsbury's Statutes 498.

(*b*) A whistle, at first blown by steam but afterwards by compressed air pumped by a gas engine, is a whistle within the prohibition of the statute (*Herbert v. Leigh Mills Co.* (1889), 53 J. P. 679; 24 Digest 905, 51).

(*c*) *I.e.* the council of a borough, urban district or rural district (P.H.A., 1936, ss. 1 (2), 343 (1)).

by the authority upon giving one month's notice in writing, and may also be revoked by the M. of H. in consequence of any representation by a person prejudicially affected. [717]

Legal Procedure.—Offences and penalties under the Act may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts (*d*). [718]

London.—The Steam Whistles Act, 1872, applies to London (*e*). [719]

(*d*) S. 4; 8 Halsbury's Statutes 498. For the Summary Jurisdiction Acts, see 11 Halsbury's Statutes 208, title "Magistrates."

(*e*) The local authorities are, in the City of London, the common council, in a borough, the borough council: see P.H. (London) Act, 1936, s. 1; 30 Halsbury's Statutes 446.

STIPENDIARY MAGISTRATES

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See also title: METROPOLITAN MAGISTRATES.

Statutes.—The principal statutes are the Municipal Corporations Act, 1882 (*a*), and the Stipendiary Magistrates Acts, 1863 and 1869 (*b*), but there are in addition numerous local Acts dealing with particular towns or districts. [720]

Appointment and Salary.—In boroughs, and in urban districts with a population of 25,000 persons, stipendiary magistrates may be appointed to act in place of or in addition to the justices of the peace (*c*). More than one may be appointed for a borough (*d*). The magistrates of the metropolitan police courts are paid a stipend, but they are not classed as "stipendiary magistrates," being the subject of special statutes and not of the Acts relating to stipendiary magistrates.

The boroughs or areas in which there are at present stipendiary magistrates are Birmingham, Bradford, Cardiff, East Ham, Grimsby, Huddersfield, Kingston-upon-Hull, Leeds, Liverpool, Manchester, Merthyr Tydfil, Middlesbrough, Pontypridd, South Staffordshire (Wolverhampton), Staffordshire Potteries (Stoke-upon-Trent), Swansea and West Ham.

(*a*) 10 Halsbury's Statutes 576.

(*b*) 11 Halsbury's Statutes 309, 316.

(*c*) Municipal Corporations Act, 1882, s. 161 (1); 10 Halsbury's Statutes 628; Stipendiary Magistrates Act, 1863, s. 3; 11 Halsbury's Statutes 309.

(*d*) Municipal Corporations Act, 1882, s. 161 (7).

Stipendiary magistrates are appointed by the Crown through the Home Secretary (in Manchester through the Chancellor of the Duchy of Lancaster), upon application made by the borough or U.D.C. In the case of an U.D.C. the resolution for an application must be passed by a majority of two-thirds of the members. The Home Secretary has a discretion as to whether any appointment shall be made (e). The salary of a stipendiary magistrate is fixed by the Crown, but may not exceed the amount specified in the application, save in the case of a borough, and then only with the consent of the council (f). [721]

Qualification.—Every stipendiary must be a barrister. In the case of a borough, he must be of seven years' standing (g). In an urban district, he may be of five years' standing (h). Certain local Acts prescribe a different period. [722]

Removal.—Stipendiary magistrates hold office during his Majesty's pleasure (i). [723]

Deputy.—With the approval of the Home Secretary, a stipendiary magistrate may appoint a deputy to act for him for a period of not more than six weeks during a consecutive twelve months, or, with the approval of the Secretary of State, for three calendar months at a time in case of sickness or unavoidable absence (k). The deputy must be a practising barrister of at least seven years' standing, and he can exercise all the powers of the stipendiary (l).

The Secretary of State himself may exercise the power to appoint or remove a deputy, if in his opinion a stipendiary magistrate is unable by reason of illness, absence or any other cause, to appoint or remove (l).

Upon a vacancy occurring through death or otherwise, a deputy may continue to act temporarily until the office is filled, provided the period be not more than six months. If there is no deputy, or the deputy is unwilling to act, the Secretary of State may appoint a qualified deputy (l). [724]

Jurisdiction.—A stipendiary magistrate is *ex officio* a justice of the peace (m), but he has the powers of two justices. That is to say, he may not only sit alone as a court of summary jurisdiction, but also, when sitting in a court-house or place appointed for petty sessions, he constitutes a petty sessional court (n). When sitting alone at such a place he has power to do alone any act, and to exercise any jurisdiction, which may be done or executed by two justices of the peace (o). All

(e) Municipal Corporations Act, 1882, s. 161 (1); 10 Halsbury's Statutes 628; Stipendiary Magistrates Act, 1863, s. 3; 11 Halsbury's Statutes 309.

(f) Municipal Corporations Act, 1882, s. 161 (4); 10 Halsbury's Statutes 628; Stipendiary Magistrates Act, 1863, s. 3; 11 Halsbury's Statutes 309.

(g) Municipal Corporations Act, 1882, s. 161 (1); 10 Halsbury's Statutes 628.

(h) Stipendiary Magistrates Act, 1863, s. 3; 11 Halsbury's Statutes 309.

(i) *Ibid.*; Municipal Corporations Act, 1882, s. 161 (2); 10 Halsbury's Statutes 628.

(k) Stipendiary Magistrates Act, 1869, s. 2; 11 Halsbury's Statutes 316.

(l) Recorders, Stipendiary Magistrates and Clerks of the Peace Act, 1906, s. 1; 11 Halsbury's Statutes 364.

(m) Municipal Corporations Act, 1882, s. 161 (3); 10 Halsbury's Statutes 629; Stipendiary Magistrates Act, 1863, s. 3; 11 Halsbury's Statutes 309.

(n) Interpretation Act, 1889, s. 13 (11), (12); 18 Halsbury's Statutes 997; Summary Jurisdiction Act, 1879, s. 20 (10); 11 Halsbury's Statutes 332.

(o) Stipendiary Magistrates Act, 1858, s. 1; 1863, s. 5; 11 Halsbury's Statutes 304; Summary Jurisdiction Act, 1848, s. 33; 11 Halsbury's Statutes 290; 1879, s. 20 (10); 11 Halsbury's Statutes 332.

the provisions of any Act of Parliament applicable to the jurisdiction of justices of the peace are applicable to the jurisdiction of stipendiary magistrates (*p*).

A stipendiary may, however, sit with any other justice or justices of the place in which he has jurisdiction, and then the decision of the court must be that of the majority present. Under certain statutes a stipendiary or his deputy must, it appears, sit alone, for example, under the first proviso to sect. 19 of the Trade Union Act, 1871 (*q*).

He must not act as a justice at any court of gaol delivery or general or quarter sessions (*r*). [725]

Precedence.—The position of the stipendiary magistrate is such as to affect the precedence of the mayor of a borough in one respect. Although the mayor is entitled to preside at all meetings of justices held in the borough and at meetings of justices acting for the county in which the borough is situate when acting in borough business, he is not so entitled when any stipendiary magistrate having jurisdiction in the borough is administering justice (*s*). [726]

Juvenile Court.—Although juvenile courts are specially constituted, a stipendiary magistrate, who is a member of the panel of justices appointed for the purpose, may sit alone if no other member of the panel is present and he thinks it inexpedient in the interests of justice to adjourn the proceedings (*t*).

A stipendiary magistrate, exercising jurisdiction in a petty sessional division for which a juvenile court panel is formed, is *ex officio* a member of the panel (*t*). [727]

Licensing.—A stipendiary magistrate, outside the limits of the jurisdiction of the metropolitan police courts, may act as a licensing justice in respect of the grant of confirmation of licences as regards any licensing district wholly or partly within his jurisdiction (*u*). [728]

(*p*) Indictable Offences Act, 1848, s. 29; Stipendiary Magistrates Act, 1858, s. 1; 11 Halsbury's Statutes 304.

(*q*) 19 Halsbury's Statutes 646.

(*r*) Stipendiary Magistrates Acts, 1858, s. 3; 11 Halsbury's Statutes 305; 1863, s. 5; 11 Halsbury's Statutes 310.

(*s*) L.G.A., 1933, s. 18 (9); 26 Halsbury's Statutes 314.

(*t*) Juvenile Courts (Constitution) Rules, 1933; S.R. & O., 1933, No. 647/L20.

(*u*) Licensing Act, 1872, s. 39; 9 Halsbury's Statutes 941.



STOCK

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See also titles :

BILLS, BORROWING BY ;
BONDS ;

| BORROWING ;
MORTGAGES.

Introductory.—The issue of stock is one of the most important methods of raising money for capital purposes possessed by local authorities. As distinct from other methods it consists of the raising of loan moneys in large blocks for a fairly long period—usually from twenty to thirty years. The minimum amount for which stock is usually issued is £250,000, although smaller issues can be and are occasionally made. Normally, no authority raises the whole of its borrowing requirements by this method. Generally that portion only which it is felt as a matter of policy ought to be “funded” is raised in this way and other methods such as mortgage loans are used for the balance. It is in fact a matter of policy to be decided in the light of local circumstances. There are occasions when heavy capital expenditure is being incurred and a stock issue is the only practical method of raising the money, while in other cases it may be felt to be advisable to issue stock as a means of replacing short-term loans. Frequently, however, a stock issue may be made to cover both requirements.

[729]

Features of Stock.—The following are some of the distinguishing features of stock, grouped for convenience into those which are usually considered to be advantageous and disadvantageous respectively.

- (a) *Advantages.*—1. Large sums are forthcoming within a relatively short time.
- 2. The period for which the money is available is usually about thirty years, with a right to redeem at an earlier date, about twenty to twenty-five years, constant borrowing and reborrowing being thus avoided and stability imparted to local finance.
- 3. The rate of interest is fixed for the full period and usually compares very favourably with rates on other forms of borrowing. If the

stock is issued at a favourable time an advantage accrues for a long period.

4. Stock is a marketable security dealt with on the Stock Exchange and has, therefore, a wider range of investors than methods such as mortgage loans.

5. There is a statutory right to utilise the sinking funds, which must be set up to redeem the stock, in the exercise of new borrowing powers.

In some cases, *i.e.* counties and municipal boroughs with a population in excess of 50,000 at the last census, the stock is a full trustee security and this is naturally an added advantage.

(b) *Disadvantages*.—1. The fact, mentioned above, that interest is fixed for the full life of the stock may be disadvantageous instead of advantageous. This depends on market conditions.

2. The costs of the issue and of subsequent administration are relatively high.

3. The marketable nature of the security tends to eliminate local interest.

While in the past stock has in exceptional circumstances been issued as irredeemable stock, or redeemable by instalments or at the option of the local authorities, the usual method to-day is to issue stock with two redemption dates, the earlier being that after which the local authority *may* redeem and the later that at which they must redeem. In some cases one fixed redemption date is given. The redemption dates have no necessary relation to the periods of the loan sanctions in respect of which the stock is issued and on which the provision for the redemption of the stock is based. It follows, therefore, that where such sinking funds have not been completed when the stock has to be redeemed, reborrowing is necessary.

In the past, stock has often been issued by inviting tenders, but the present-day method is generally either by means of a public issue or by the private sale of the whole of the stock at a fixed price, which may be at par or at a premium or discount. At the present time private issues can only be made in cases where the issue does not exceed £250,000.

[730]

Power to Issue Stock. *L.G.A.*, 1933.—It is provided by the L.G.A., 1933, sect. 196 (1) (a), that where a local authority are authorised to borrow money, they may, subject to the provisions of the Act, raise money, with the consent of the Minister, by stock issued under the Act. This is in addition to other powers possessed by them; but parish councils may not issue stock. The local authority must, of course, possess the necessary borrowing powers up to the amount of the issue and must obtain the consent of the M. of H. before making the issue.

The stock may be created, issued, transferred, dealt with and redeemed in such manner as may be prescribed (b). The regulations are made by laying a draft before both Houses of Parliament for approval, and may provide for discharge of loans and, in case of the consolidation of debt, for the extension or variation of the times within which the loans may be discharged. The Local Authorities (Stock) Regulations, 1934, have been made in accordance with this power and include these and other matters which the Act requires to be prescribed, as well as other necessary provisions.

(a) 26 Halsbury's Statutes 413.

(b) L.G.A., 1933, s. 204; 26 Halsbury's Statutes 416.

Local Acts.—Many local authorities have power under their local Acts to issue stock. Such issues are regulated by the provisions of the special local Act. [731]

Local Loans Act, 1875.—(See also the title LOCAL LOANS ACT).

Debenture stock under the Local Loans Act, 1875, can be created and issued only by a local authority which has power under some other Act to issue such stock. The *nominal* amount which may be issued is not to exceed the amount authorised to be raised in this way (c). This may be an inconvenience where it is desired to issue at a discount.

The issue of debenture stock under the Local Loans Act, 1875, is a method rarely used now. Sect. 6 of that Act lays down the regulations to be followed. The stock is to be redeemed at par at the option of the local authority at such times and under such conditions as were laid down at the time of issue. Bearer certificates may be issued but otherwise transfers are required to be in writing.

At the time of issue, the local authority are required to issue a printed copy of the conditions relating to the stock. [732]

The Local Authorities (Stock) Regulations, 1934.—The Local Authorities (Stock) Regulations, 1934, issued under the powers conferred on the M. of H. by sect. 204 of the L.G.A., 1933, lay down in considerable detail the procedure which must be followed both in the creation and management of stock. In outlining the procedure as shown below the specific requirements of the regulations have been incorporated with more general matters not dealt with therein, the appropriate reference being given where there is a special regulation to be complied with.

Creation of Stock.—The stock is created by resolution of the local authority after the necessary consent order of the M. of H. has been obtained (Art. 3). The regulations contain two alternative model forms of resolution, but provided that the form used is of like effect the model form need not be strictly adhered to. The resolution in any case must specify :

- (a) the borrowing powers to be exercised ;
- (b) the amount of the issue ;
- (c) the price of the issue ;
- (d) the rate of interest and times of payment ;
- (e) the period after which the local authority have the option to redeem ;
- (f) the period within which the stock must be redeemed or purchased or extinguished ;
- (g) the name of the stock ; and
- (h) whether transferable in the books of the authority or by deed ;

The local authority may, however, specify the method by which any of the items of (b)—(g) above are to be ascertained instead of the actual matter. In practice it is often necessary to leave such matters as the price of issue for negotiation at the actual time of issue. The price of issue must not be lower than 95 per cent. without the Minister's consent and the compulsory redemption date not more than sixty years from the date of issue.

In fixing the dates for redemption no regard need necessarily be had in practice to the sanction periods to be exercised. The Minister would, of course, require to be satisfied that the necessary borrowing powers existed before issuing the consent order. [733]

Method of Issue.—The method of issue is a public issue or a private issue (in case of small issues), according to circumstances. In the former case it will be necessary to make arrangements with a bank issuing house or brokers to make the issue on behalf of the local authority and to arrange for the amount to be underwritten. In the case of a private issue, the whole of the stock is usually sold to a firm who dispose of it themselves. The price obtained is usually slightly lower because underwriting costs may not be incurred. [734]

Appointment of Registrar.—The local authority must appoint a registrar who may be one of their own officers, or the Bank of England, or any other bank, banking or other company (Art. 16). [735]

Issue of Prospectus and other Preliminaries.—Although there is no specific provision in the regulations as to the issue of a prospectus, one is necessary in the case of a public issue, while in the case of a private issue a statement in lieu of prospectus is issued in the press. The prospectus gives the details of the issue outlined in the resolution (see above) together with necessary information as to method of payment of instalments, first interest payment, etc. It is usual also to give in some detail financial statistics of the authority together with information indicating the method of provision for redemption and that the issue will be officially quoted on the Stock Exchange.

It will also be necessary to arrange for underwriting in the case of a public issue, to pay loan capital duty on the issue and to decide the method of paying stamp duty on transfers, i.e. whether it is advisable to compound the stamp duty by agreement (essential unless the stock is transferable by deed) or to pay on each transfer. In the latter event the prospectus will show whether or not the local authority undertake liability for such transfer duty. [736]

Provisions to Safeguard the Local Authority.—The following special regulations are intended to safeguard the local authority.

(a) *Private Issue.*—The contract made by the local authority with the purchaser of the whole of the stock must provide that no allotment letter or scrip certificate shall be in a form creating a contractual relationship between the original purchaser and the person to whom the document is issued instead of between the local authority and the holder of the document. No such letter or certificate is to be issued until the issuing house have paid to a special banking account the amount due in respect thereof (Art. 34).

(b) *Public Issue.*—All moneys received by the issuing house in respect of the stock must be transferred to a special banking account of the local authority. In the case of moneys paid before allotment, the amount must be transferred within three days of allotment and moneys received subsequently within twenty-four hours of receipt or of collection of cheques as the case may be (Art. 33).

(c) *Generally.*—The issuing house, unless themselves the registrars, must supply as soon as possible complete records of scrip certificates issued (or of allotment letters, if no scrip is issued), and also details of the date of payment of the sums due in respect thereof (Art. 35). The registrar is not to register or inscribe any person as the holder of stock unless and until fully-paid scrip certificates (or allotment letters where no scrip is issued) to the amount claimed to be registered have been surrendered. This does not apply where the local authority themselves issue the scrip certificates and allotment letters and one of their officers is registrar. There is special provision in the case of lost scrip for indemnity to be given and registration effected (Art. 36). [737]

Registration.—The registrar must keep a stock register of all stockholders which is *prima facie* evidence of ownership (Art. 17). He must issue certificates in the case of stock transferable by deed and may do so where it is transferable in the books of the authority. There is special provision for the issue of new certificates where the original is lost and indemnity is given, and also in the case of damaged certificates surrendered (Arts. 17 and 18).

Where a bank are registrars, they may, with the consent of the local authority, issue forms and instructions in respect of various necessary matters (Art. 43). [738]

Transfers and Transmission.—Stock may be transferable in the books of the authority (Art. 20) or by deed (Art. 21), stock transfer books being kept in the former case and a register of transfers in the latter. As already indicated, the question of liability for stamp duty depends on the terms of the issue. Unless the local authority have compounded for stamp duty, transfers must be by deed duly stamped (Art. 24). The books may be closed for a period of thirty days before the date on which payment of interest is due (Art. 23).

The local authority are under no obligation to allow executors and administrators to transfer stock belonging to a deceased holder unless or until probate of the will or letters of administration have been produced. Where two or more persons are joint holders there is assumed to be a right of survivorship between them (Art. 25). In other cases of transmission satisfactory evidence must be produced. [739]

Stock Certificate to Bearer.—Unless the resolution creating the stock provides to the contrary, the registrar may on demand issue to stockholders bearer certificates in multiples of ten pounds with interest coupons attached. The stock represented by the bearer certificate will then cease to be transferable in the books or by deed, but the certificate may be surrendered and the original method reverted to. Interest coupons are payable at the head office of the bank at the expiration of three days from presentation and at a branch office five days from presentation. There are the usual powers to issue new certificates in lieu of damaged or lost certificates, on indemnity being given where necessary (Art. 32). [740]

Payment of Interest.—The local authority is required to establish a separate account of the general rate fund or county fund, as the case may be, an account called the stock interest account. To this account must be carried the amounts due for interest, and all payments are made thereout (Art. 5) to persons registered as holders at the date of payment or closing of the transfer books as the case may be (Art. 27). Before paying interest the registrar requires evidence of title in appropriate cases (Arts. 28 and 29). In the case of joint holders an effective receipt may be given by any one of them unless contrary notice is given (Art. 30). Interest may be sent by post on due notice given of the intention by the registrar unless objection is made by the stockholder within fourteen days of notice. The latter may himself request the interest to be sent by post to himself or paid to someone else (Art. 31).

Where interest is unclaimed for five years from the due date the local authority must give notice to the holder by registered post then and at the expiration of three other successive periods of five years (Art. 39). At the end of every successive period of ten years from the due date the local authority may require the registrar, in the absence of agreement to the contrary, to repay the amount of unclaimed interest

to the general rate fund or county fund without prejudice, however, to the stockholders' rights (Art. 39). [741]

Sinking Funds for the Redemption of Stock.—For the purpose of redemption, the local authority are required to establish separate stock sinking fund accounts as part of the general rate fund or county fund, as the case may be, in respect of each class of stock. Separate accounts are required to be kept in respect of investments and of each separate undertaking for which money is borrowed by stock and for each separate borrowing power exercised. The accounts must show the amounts chargeable thereto and amounts redeemed, purchased or extinguished by means of a sinking fund account. To each account must be carried special capital receipts, interest on such capital sums, annual contributions, with interest where necessary, and other appropriate sums (Art. 6).

The annual contribution to the sinking fund, which is of course based on the sanction period of the loan, may be calculated on either the accumulating or the non-accumulating method. The interest on an accumulating sinking fund is to form part of the revenue of the county or general rate fund and interest on the amount in the sinking fund account is to be credited to the account out of that fund at the rate assumed when calculating the annual contribution.

Normally the sinking fund contributions must be made over the whole sanction period, but this does not apply where there is a special power to postpone repayment. Where stock is raised to lend to a parish council the amount to be credited to sinking fund account is the sum received from the latter in repayment in each year. Where stock is issued to repay old loans for which no period for repayment was fixed the provision must be made within the period which the local authority, with the consent of the Minister of Health, determine (Art. 7).

The provisions of sect. 214 of the L.G.A., 1933, apply to stock under the regulations and require adjustment of contributions in appropriate cases and allow contributions to be discontinued if the fund is complete.

Provision must be made to redeem the discount on the stock and the expenses of issue by the provision of a sinking fund within the minimum life of the stock (Art. 8).

Sinking fund moneys are, of course, primarily intended to repay the principal money, and pending use for that purpose they may be applied either in purchasing stock and extinguishing it or in lieu of borrowing for new capital purposes. Otherwise the money must be invested in statutory securities (Art. 9). When the money is used to redeem or purchase and extinguish stock the local authority may deem the amount redeemed to form part of the stock on any borrowing power up to the amounts which could be redeemed out of the sinking fund existing in respect of that borrowing power (Art. 10). Where an accumulating fund is applied for redemption or purchase and extinction of stock, interest on the amount so applied must be credited to the fund in each year. Where stock is purchased above par, this interest is only calculated at par value, and the amount in excess of par must be credited to the fund either in the year of use or in such subsequent years as the M. of H. may approve (Art. 11).

The consent of the Minister is necessary to the use of the money for new capital purposes. A transfer must be made from the account to which the stock was originally allocated to a new account at par or such other value as the Minister may direct. The amount so transferred is treated as stock redeemed in the transferor account and as a

new issue in the transferee account, except, of course, that the stock is not extinguished. The money withdrawn from sinking fund is treated as though applied in the redemption of stock (Art. 13).

The policy to be followed is a matter to be decided in the light of the local authority's borrowing position. Thus in some cases it may be a sound policy to use the funds for new capital purposes, but in others it may be desirable to retain sums invested to be available to repay the stock at the due date and avoid the conversion which is otherwise necessary. [742]

Miscellaneous Regulations.—Where the M. of H. has given his consent to reborrow in respect of existing securities, the conversion may be carried out by the issue of stock in lieu of the security converted, if the holders consent, or by cash raised by the new stock issue. The local authority may in all cases make such reasonable payments as they think fit to the persons concerned as compensation either by issuing stock or in cash. The amount must not exceed the amount authorised in the consent order. Such stock as is issued for this purpose must be redeemed, or provision made for redemption, within a period not exceeding that of the borrowing powers represented by the securities converted as the Minister may determine or prescribe. Provision must be made for the transfer of existing sinking or other funds with any necessary additional sums which may be required (Art. 14).

The Minister may approve a scheme for the consolidation of the loans which it is proposed to consolidate by the issue of stock (Art. 14).

Money unused in respect of the issue may, and must if the Minister directs, be invested in statutory securities other than those issued by the local authority (Art. 15).

When stock is due for repayment and the amount is unclaimed the local authority must invest the amount for ten years. At the end of that time they may use it, with accumulations, for any purpose approved by the Minister (Art. 40). [748]

Forged Transfers.—Under the Forged Transfers Acts, 1891–2, a local authority may pay compensation for losses arising from forged transfers and may borrow for the purpose on the same conditions as the borrowing represented by the original security, subject to a maximum period of five years. Alternatively they may form a reserve fund for this purpose by charging transfer fees up to one shilling per centum or by accumulation of capital or income. They may take out an insurance policy to cover the liability. [744]

London.—The L.C.C. (Finance Consolidation) Act, 1912 (as amended by the L.C.C. (Money) Acts, 1920, sect. 6; 1921, sect. 6; 1925, sect. 6; 1936, sects. 7, 9 and 10; and 1937, sects. 7 and 8), contains provisions authorising the creation of consolidated stock for raising any money which the council are authorised to expend on capital account, or to lend, or any other money which they are authorised to borrow.

Stock may be redeemable at a fixed date or not as the council may fix at issue (Act of 1912, sect. 10). Stock may be purchased, redeemed or converted (sect. 11). The consolidated loans fund is to be maintained for the purpose of paying dividends or redeeming or extinguishing stock (sect. 12, as amended by Act of 1936, sect. 7). Power is given, where consolidated stock is to be paid up in instalments, to apply money raised by stock to make up dividends before all instalments are paid up (sect. 15). Stock may be issued to pay expenses of creating stock (sect. 16). Stock and dividends, etc., are a first charge on the

whole of the council's property (sect. 17). The appointment of a receiver may be applied for when dividends are two months in arrear (sect. 18). National Debt Commissioners may invest in consolidated stock (sect. 19). Stock is personal estate (sect. 20).

Stock may be issued to raise money for redemption of bonds issued by the council under the Public Authorities and Bodies (Loans) Act, 1916, as amended by the Housing (Additional Powers) Act, 1919, or under the Housing Act, 1936 (L.C.C. (Money) Acts, 1929 and 1930).

Provisions are also included for registration and transfer of stock (sects. 21, 22 (as amended by Act of 1936, sect. 9) and sects. 23—24), certificates to bearer (sect. 25) and unclaimed stock and dividends (sects. 26—33, and Act of 1936, sect. 10). [745]

STOCK REGULATIONS

See STOCK.

STORM WATER DRAINAGE

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Introduction.—The appearance, accumulation and discharge of storm water on land raises certain problems which may be roughly grouped under three heads. In the first place, the position of landowners *inter se* has to be considered. Secondly, highway authorities must be concerned by reason of the accumulation and discharge of storm water on to or from their highways. Finally, the sewers of a local authority, using the term in the sense of the P.H.A., 1936 (a), receive storm water as well as sewage and this gives rise to rights and duties as between the local authorities *inter se*, as between the latter and the highway authorities on the one hand and private persons on the other. [746]

Property Owners and Storm Water. (a) *Rights.*—An owner of land is entitled to accumulate all the water which may come upon his land (b).

(a) S. 1; 29 Halsbury's Statutes 322.

(b) *Salt Union, Ltd. v. Brunner Mond & Co.*, [1906] 2 K. B. 822; 44 Digest 35, 269. Cf. as regards underground water, *Chasemore v. Richards* (1859), 7 H. L. Cas.

Water itself is incapable of ownership, but the right to accumulate it is an incident of ownership. He has an unqualified right to drain his land for agricultural purposes in order to get rid of mere surface water (*i.e.* the supply of water being carried and its flow, see *infra*) following no regular or defined course; and a neighbouring proprietor cannot complain if he is thereby deprived of such water which otherwise would have come to his land (*c.*) [747].

(b) *Liabilities.*—Generally, however, it is the object of landowners to prevent storm water from coming on to their land rather than to collect it.

A landowner can prevent the entrance of storm water on to his land even though the necessary result is to cast that water on his neighbour's land. He may therefore embank his land against floods regardless of the effect upon adjoining land (*d*). This right, however, is subject to any right of drainage enjoyed by private persons or highway authorities (see *infra*).

Although allowing the escape of storm water does not entail liability, the causing of such escape does, if the escape is due to some embankment, channel or other artificial structure made or maintained by him there or to any other alteration in the natural condition of his land (*e*). Any embankment or artificial structure protecting the neighbour's land against floodwater may be removed. In other words, the restoration of the *status quo* does not involve any liability (*f*). Similarly it was held that, in the absence of any allegation of prescriptive rights the court will not restrain the draining of a gravel pit into a stream to the injury of watercress beds supplied by such stream (*g*).

Sometimes, the construction of a highway interferes with the natural flow of storm water and may lead to a liability on the part of the highway authority. The construction of the highway *per se* amounts to misfeasance in such circumstances and hence the exemption from liability enjoyed by highway authorities where there is merely non-feasance cannot apply. Thus, where a highway authority in pursuance of statutory powers constructed a roadway along the slope of a hill which roadway interfered with the normal course of storm and rain water and the provision they made for collecting and dealing with such water was inadequate, they were held liable in damages to the owner of premises situate below the road which suffered from the storm water. The court found that it was not caused by act of God and that the defendants had failed to exercise reasonable care in the construction and maintenance of their road, the case therefore being one of misfeasance and not non-feasance (*h*). It was otherwise, however, and the plaintiff failed, where the wrongful act of a third party and not the

849; 23 J. P. 596; 44 Digest 34, 252; *Bradford Corp. v. Pickles*, [1895] A. C. 587; 60 J. P. 3; 44 Digest 35, 257.

(c) *Rawstron v. Taylor* (1855), 11 Exch. 369; 156 E. R. 873; 44 Digest 36, 263.

(d) *Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co. Ltd.*, [1927] A. C. 226. Cf. also *Greyvensteyn v. Hattingh*, [1911] A. C. 335.

(e) *Whalley v. The Lancashire and Yorkshire Rail. Co.* (1884), 13 Q. B. D. 181. Note also that the rule that a person is responsible for causing the escape of water from his land into that of his neighbour is subject to an exception in the case of adjoining mine-owners. See *Smith v. Kenrick* (1849), 7 C. B. 515.

(f) *Mason v. Shrewsbury & Hereford Railway* (1871), L. R. 6 Q. B. 578.

(g) *Weeks v. Heward* (1862), 10 W. R. 557; 44 Digest 36, 266.

(h) *Baldwins, Ltd. v. Halifax Corp.* (1916), 80 J. P. 357; 14 L. G. R. 787; 44 Digest 63, 452.

action of the highway authority resulted in an unusual flow of water causing damage to the plaintiff's premises (*i*).

Storm water is a thing naturally on land and hence *per se* cannot lead to liability under the rule in *Rylands v. Fletcher* (*k*), by which the occupier of land who brings and keeps upon it anything likely to do damage if it escapes, is bound at his peril to prevent its escape and is liable for all the direct consequences of its escape even if he has been guilty of no negligence. Water accumulated in a reservoir or artificial pool, however, was the origin of, and is subject to, the rule in *Rylands v. Fletcher*. The effect of storm water on such artificial accumulations, however, may lead to liability. The rule is subject to an exception in the case of an act of God and where as a result of a very violent storm water escapes from artificial pools the embankments of which were carefully constructed and adequate for all normal occasions, the court held there was no liability (*l*). But in a later case the House of Lords took the view that at any rate in Scotland extraordinary and unprecedented rainfall could never be an act of God (*m*). [748]

Highways and Storm Water.—The presence of water whether temporarily, as in the case of storm water, or permanently as where the highway crosses a stream, does not destroy the legal character of the highway. The right of passage remains even though floods may render the way dangerous or impassable.

(a) *Powers of Highway Authorities.*—Highway authorities enjoy certain rights in regard to the drainage of water from their highways.

At common law a duty exists on the part of the owner of lands adjoining a highway to cleanse and scour his own ditches to such an extent as to prevent nuisances or obstruction to passengers on the highway. This duty can only be enforced by indictment (*n*).

The Highway Act, 1885 (*o*), sect. 67, empowers, but does not compel, the surveyor or highway board to cleanse ditches in a more effectual manner than landowners could be compelled to cleanse them at common law. The power includes the making, scouring and cleansing and keeping open of ditches, gutters, drains or watercourses and also the making and laying of such trunks, tunnels, plats or bridges as shall be deemed necessary in and through any lands or grounds adjoining or lying near the highway.

Drains within the meaning of the section have been held to include a pipe not connected with a defined channel (*p*), but not an overflow pipe from a catchpit for storm water used at one time to carry water into an irrigation gutter on adjoining owners' property (*q*) ; nor a dumb well into which waste water flowed and therein penetrated into the soil (*r*). Further, as was once said by STIRLING, J (*s*) : "The section (sect. 67), however widely construed, only authorises the making and keeping open of ditches and drains in and through lands adjoining a

(*i*) *Ely Brewery v. Pontypridd U.D.C.* (1904), 68 J. P. 3 ; 36 Digest 32, 178.

(*k*) *Rylands v. Fletcher* (1866), L. R. 1 Ex. 265 ; (1868), L. R. 3 H. L. 330.

(*l*) *Nicols v. Marsland* (1896), 2 Ex. D. 1.

(*m*) *Greenock Corp. v. Caledonian Railway*, [1917] A. C. 556. And see *A.-G. v. Cory Bros.* (1919), 85 T. L. R. at p. 574; [1921] 1 A. C. 521 ; 36 Digest 193, 344.

(*n*) See the *Justice of the Peace*, Vol. 29, p. 319.

(*o*) 9 Halsbury's Statutes 83.

(*p*) *A.-G. v. Copeland*, [1902] 1 K. B. 690.

(*q*) *Ballard v. Leek U.D.C.* (1917), 87 L. J. (Ch.) 146.

(*r*) *Croft v. Rickmansworth Highway Board* (1888), 39 Ch. D. 272.

(*s*) *Craysdale v. Sunbury-on-Thames U.D.C.*, [1898] 2 Ch. 519.

highway, and does not authorise the discharge of the contents of any ditch or drain on such lands."

The P.H.A., 1925 (*t*), sect. 21, empowers urban authorities by notice to require owners to prevent surface water from their premises flowing on to or over the footpath of any street, and sect. 22 gives similar powers to prevent soil or refuse from land from being washed into streets. Both these are adoptive sections which rural district councils cannot adopt. The Towns Improvement Clauses Act, 1847 (*u*), sect. 74, requires waterspouts to be fixed to houses to avoid roof water falling on passers by. [749]

(b) *Liabilities of Highway Authorities.*—Where highway ditches (which are portions of the highway) for taking refuse or storm water get out of repair, then the highway authority are entitled to take advantage of the usual defence of non-feasance, but if they are made by the authority adjoining the highway and in such a position as to cause damage unless kept in order, the case is one of misfeasance and the authority are liable (*a*).

Local authorities, under the P.H.A., 1936, in regard to the public sewers vested in them, are liable for negligence in failing to keep the same in proper repair. It is therefore of the greatest importance to determine in what capacity any authority have control of a particular conduit taking surface water drainage, *i.e.* whether as highway authority or local authority in the public health sense (*b*). The transfer of highways to district councils does not affect this position, and district councils, though local authorities under the P.H.A., are entitled to claim the exemption enjoyed by highway authorities in respect thereof (*b*). [750]

Sewers and Storm Water Drainage.—Local authorities within the meaning of the P.H.A., 1936, *i.e.* public health authorities, are concerned in the disposal of storm water.

(i.) *Surface Water Conduits are Sewers.*—Pipes conveying rain or surface water can nevertheless be sewers provided they are used for the drainage of more than one building not in the same curtilage (*c*). See title SEWERS AND DRAINS.

Sect. 14 of the P.H.A., 1936, in imposing the general duty on local authorities to provide necessary public sewers, refers to "effectually draining their district"; the duty therefore covers the dealing with storm water as well as sewage so called.

(ii.) *Dual System of Drainage.*—The P.H.A., 1936 (*d*), now makes it clear, as did the Private Street Works Act, 1892, so far as sewers laid as private street works were concerned, that the local authority can provide and maintain distinct systems for foul water and for surface water. See title SEWERS AND DRAINS.

(iii.) *Rights and Duties of Local Authorities.*—Storm water discharged into sewers often results in the overcharging of such sewers

(*t*) 18 Halsbury's Statutes 1122.

(*u*) *Ibid.*, 554.

(*a*) *Andrews v. Merton and Morden U.D.C.* (1921), 56 L. Jo. 406.

(*b*) See *White v. Hindley Local Board* (1875), L. R. 10 Q. B. 219, and *Smith v. West Derby Local Board* (1878), 3 C. P. D. 428.

(*c*) Per SMITH, L.J., in *Ferrand v. Hailas Land and Building Co.*, [1898] 2 Q. B. 135, at p. 144; 57 J. P. 692; 41 Digest 17, 126; *Silles v. Fulham Borough Council*, [1908] 1 K. B. 829; 67 J. P. 278; 41 Digest 21, 160; *Durrant v. Branksome U.D.C.*, [1897] 2 Ch. 291; 61 J. P. 472; 41 Digest 21, 161; *Wilkinson v. Llandaff and Dinas Powis R.D.C.*, [1908] 2 Ch. 695.

(*d*) 29 Halsbury's Statutes 322.

and in consequence may lead to difficulties (a) as between local authorities *inter se* where their respective sewers connect ; (b) as between local authorities and highway authorities ; and (c) as between local authorities and private persons.

(a) Sect. 28 of the P.H.A., 1936, in enabling local authorities by agreement to cause communication to be made between their sewers and sewage disposal works, and those of other local authorities, contains a proviso that where one authority connects their sewers with those of another the first-mentioned authority shall not, without the consent of the other authority, enter into any agreement providing "for admitting further sewage" (e).

(b) Sect. 21 of the P.H.A., 1936, provides that agreements may be made between local authorities and county councils for the use of highway drains and sewers for sanitary purposes and the use of public sewers for the drainage of highways. See titles SEWERAGE AUTHORITIES and SEWERS AND DRAINS.

(c) A general duty is imposed on local authorities to maintain their public sewers (f), and further they must so discharge their functions so as not to create a nuisance (g). Negligence in not keeping public sewers in repair (though such public sewers only take surface water) will involve the local authority in liability and the principle applicable to highway authorities exempting them from liability for non-feasance does not apply (h).

Semble, a local authority who allow a sewer to be regularly surcharged do not "keep it" so as not to be a nuisance and would therefore be liable in damages if negligence could be proved (i); still more the diversion of sewage from another drain into an already overcharged sewer will lead to liability (k).

If, however, the sole matter of the plaintiff's complaint is the failure of the local authority to provide sufficient sewers, then no action will lie, the appropriate procedure being by way of complaint to the M. of H. under sects. 321—324 of the P.H.A., 1936 (l). [751]

See titles SEWERS AND DRAINS and CONSTRUCTION OF SEWERS.

London.—Sect. 28 of the P.H.A., 1936 (m), extends to London so as to enable agreements to be made between sewerage authorities within and without London. Statutory arrangements have been made for the reception of out-county drainage in various cases. See the Acts mentioned in London note to title SEWERAGE AUTHORITIES.

The P.H. (London) Act, 1936, sect. 32 (n), enables the L.C.C. to discharge storm water from sewers or pumping stations into certain

(e) See s. 24 (1), proviso (c), and Lumley's Public Health, 11th ed., Vol. I., p. 85, note (d).

(f) P.H.A., 1936, s. 23 ; 29 Halsbury's Statutes 343.

(g) *Ibid.*, s. 31.

(h) *White v. Hindley Local Board* (1875), L. R. 10 Q. B. 219 ; *Whitfield v. Bishop Auckland U.D.C.* (1897), 42 Sol. Jo. 67 ; and (1898), W. N. 37 ; *Baron v. Portsdown U.D.C.*, [1900] 2 Q. B. 588 ; 64 J. P. 675 ; 41 Digest 25, 192.

(i) See *Stretton's Derby Brewery Co. v. Derby Corp.*, [1894] 1 Ch. 431 ; 41 Digest 24, 182.

(k) *Dent v. Bournemouth Corp.*, (1897), 66 L. J. (Q. B.) 395 ; 41 Digest 30, 225 ; and see *per Lord MACNAGHTEN* in *Hawthorn Corp. v. Kannuluk*, [1906] A. C. 105 ; 41 Digest 25, 194.

(l) *Robinson v. Workington Corp.*, [1897] 1 Q. B. 619 ; 61 J. P. 164 ; 38 Digest 152, 23 ; *Hesketh v. Birmingham Corp.*, [1924] 1 K. B. 260 ; 38 Digest 48, 280.

(m) 29 Halsbury's Statutes 347.

(n) 30 Halsbury's Statutes 460.

streams and thence into the Thames. Discharge must be at such times and in such manner as to prevent flooding of places and premises within the county and so far as practicable not to create a nuisance in certain of the streams. Provisions as to dredging by the L.C.C. in certain streams and protective provisions for authorities concerned are contained in the section. [752]

STREET ACCIDENTS

See also titles :

ACCIDENTS ;

AMBULANCES ;

GAMES, PROVISION FOR ;

HOSPITALS ;

MISFEASANCE AND NON-FEASANCE ;

MOTOR VEHICLES ON HIGHWAYS ;

NEGLIGENCE ;

ROAD SIGNS ;

ROAD TRAFFIC ;

TRAFFIC CONTROL.

The fore-mentioned titles contain information with regard to measures which can be taken by regulations and bye-laws to prevent the occurrence of street accidents and the provision and maintenance of ambulances. The question of liability for accidents is also dealt with.

Of particular importance in this connection is the closing of streets to vehicular traffic for their use as playgrounds for children (see title GAMES, PROVISION FOR (a)).

Of recent years there has been in force in many districts an arrangement by which reports are furnished by the police authorities to local authorities notifying motor accidents. Such information is particularly valuable with regard to the provision of street refuges in places which are considered particularly dangerous to pedestrians. Furthermore, in some places police officers are stationed to control crossings largely used by school children, and paid or voluntary guardians are appointed for marshalling children at these points.

The National Safety First Association aims at educating the public (including school children) in the use of all devices and conduct likely to reduce street accidents. The liability of authorised insurers for re-imbursement to hospitals, etc., of the expenses of treatment for victims of street accidents caused by motor vehicles is provided for by sect. 36 (2) of the Road Traffic Act, 1930 (b), as amended by sect. 33 of the Road and Rail Traffic Act, 1933 (c). The liability under this section is not to exceed £50 for an in-patient and £5 for an out-patient. Under sect. 16 of the Road Traffic Act, 1934 (d), the expenses of emergency treatment, following upon a similar accident, can be recovered by a hospital and/or a registered medical practitioner, while the services of the chief officer of police can be requisitioned for the identification of the vehicle causing the accident, if necessary. [753]

(a) Vol. VI., p. 158.
(c) *Ibid.*, 898.

(b) 28 Halsbury's Statutes 637.
(d) 27 Halsbury's Statutes 547.

STREET BETTING

See BETTING.

STREET BINS

See SCAVENGING.

STREET COLLECTIONS

See FLAG DAYS.

STREET LIGHTING

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*See also titles : LIGHTING AND WATCHING ;
TREES AND HEDGES ;
TRUNK ROADS.*

Street Lighting.—The powers of urban authorities in England and Wales to light roads are derived from sect. 161 of the P.H.A., 1875. Rural authorities may acquire these powers by an order of the M. of H. under the L.G.A., 1933, sect. 272 (a). Parish councils are given similar powers by the Lighting and Watching Act, 1833, and the L.G.A., 1894, sect. 7. The provisions of the Lighting and Watching Act cease to apply where sect. 161 of the P.H.A., 1875, is in operation.

None of the above-mentioned powers may be exercised by a county council, but under sect. 23 of the Road Traffic Act, 1934, county councils may, if and when they consider that any county road or part thereof should be lighted, or that the lighting should be improved, exercise lighting powers notwithstanding the provisions of the 1833 and 1875 Acts.

(a) See also P.H.A., 1936, s. 13.

Unlike London, where the borough councils are under statutory obligation to "cause the streets within their area" to be well and sufficiently lighted (*aa*), the powers of provincial local authorities in England and Wales are permissive only, except where a road may be rendered unsafe by an obstruction or other circumstance.

Sect. 150 of the P.H.A., 1875, confers upon an urban authority power to require the provision of "proper means for lighting" in a private street. If, after notice, the frontagers fail to make the required provision, the urban authority may do so at the charge of the frontagers. The latter course is almost invariably followed, as it is impracticable for a number of owners to deal satisfactorily with a matter of this kind. This section refers only to "means of lighting," such as posts, lamps, connections, etc., and places no obligation upon the frontagers to light and maintain.

The powers of a local authority under sect. 150 are alternative to, and not in substitution of, their powers to light streets under sect. 161 of the same Act. It is, in fact, the practice of many authorities to provide lighting equipment in private streets, and to light the streets at the cost of the rates, often long before a street is made up and taken over.

The powers conferred upon an authority under sect. 6, Private Street Works Act, 1892, are similar to those given under sect. 150, P.H.A., 1875, except that they are subject to the conditions as to plans, notices, appeals, etc., laid down by the former Act.

It will be observed that under the P.H.A., 1875, sect. 161, an urban authority may not supply the illuminant themselves, except in cases where there is no undertaker having statutory powers to supply, who is actually supplying illuminant within the area. Where there is such an undertaker, the powers of an urban authority are limited to the provision of lamps, lamp-posts and other materials and apparatus they may think necessary for lighting the streets, markets and public buildings in their district, and to contracting for the supply of illuminant.

The siting of lamp-posts in a highway is in the discretion of the lighting authority. This is important, as the efficiency of a modern street-lighting installation depends upon the positions of the lamps being scientifically determined. This would be impossible if the lighting authority were required to have regard to the views of residents and others.

Even in cases where the erection of a lamp may more or less obstruct access to premises, the owner of the premises has no right of action against the lighting authority so long as they exercise their discretion in a proper manner (*b*).

It is not unusual for a gas or electricity supply undertaking to supply illuminant or other public lighting services to a local authority without any written contract. It has been held that where there is no specific provision as to the termination of a contract for public lighting, the contract is not perpetual but is terminable by notice by either party (*c*).

The obligations and liability of street lighting authorities have been dealt with in a number of cases.

(*aa*) Metropolis Management Act, 1855, s. 130; 11 Halsbury's Statutes 917. See *Polkinghorn v. Lambeth Borough Council*, [1938] 1 All E. R. 389; 102 J. P. 181; Digest Supp., C. A.

(*b*) *Goldberg & Sons v. Liverpool Corp.* (1900), 82 L. T. 362; 16 T. L. R. 320; *Chaplin v. Westminster City Council*, [1901] 2 Ch. 329; 65 J. P. 661; *Escott v. Newport Corp.*, [1904] 2 K. B. 369; 68 J. P. 185.

(*c*) *Crediton Gas Co. v. Crediton U.D.C.*, [1928] Ch. 447; 92 J. P. 76.

It was held in a case where a vehicle collided with a lamp-post at a dangerous place that the lighting authority was not guilty of negligence by their failure to light the lamp, as they were not under any statutory obligation to do so (*d*).

Where public lamps are provided, the authority is entitled to determine the times at which they shall be lighted and extinguished, and provided they exercise their discretion in a *bona fide* manner, and the lamps are alight during the hours so determined, they are not liable for any accident resulting from the lamps being unlighted at other times (*e*).

Where, however, there is neglect to maintain the lamps in lighting during the hours determined, the authority may be liable. (See a case (*f*) where the defendants, as the highway authority, had erected a post at the entrance to a footway to protect it from cattle and, as the lighting authority, had provided a lamp near the post which normally was lighted at night, it was held that the plaintiff, who, when using the footpath after dark, sustained damage from contact with the post in consequence of the lamp being unlighted, was entitled to succeed in his action against the authority.)

In one case (*g*), it had been the practice of a local authority to light a lamp fixed to a retaining wall, but they had discontinued doing so. The plaintiff, at a time when the lamp was unlighted, strayed from the street and fell over the retaining wall, suffering injuries. He brought an action against the authority, alleging negligence, which was dismissed on the ground that as the authority was under no legal obligation to provide street lighting, they were not bound to continue any lighting they might have been doing, unless they had done something to make the road dangerous in the absence of lighting.

An authority having undertaken to light a street may, however, become liable for damages resulting from the lighting being done negligently and inadequately (*h*). [754]

Administration.—The allegation that the absence of effective street lighting was responsible for many of the road accidents occurring during recent years caused the Minister of Transport to set up a Departmental Committee in June, 1934, “to examine and report what steps could be taken for securing more efficient and uniform street lighting, with particular reference to the convenience and safety of traffic, with due regard to the requirements of residential and shopping areas, and to make recommendations.”

This committee issued its first interim report in September, 1935. The report deals largely with the technical aspects of the subject, but it refers also to the question of administration and makes certain recommendations with regard to proposed legislation. The report does not deal with the allegation which led to the setting up of the committee, and it is generally agreed by those who have made a study of the available evidence and statistics covering many thousands of cases, that these do not support the view that any substantial proportion of road accidents can be attributed to insufficient or ineffective lighting.

(*d*) *Mellor v. Heywood (Mayor, etc., of)* (1884), 48 J. P. 148.

(*e*) *Young v. St. Mary, Islington (Vestry of)* (1896), 60 J. P. 821.

(*f*) *Lamley v. East Retford Corpn.* (1891), 55 J. P. 133.

(*g*) *Sheppard v. Glossop Corpn.*, [1921] 3 K. B. 132; 85 J. P. 205.

(*h*) *McClelland v. Manchester Corpn.*, [1912] 1 K. B. 118; 76 J. P. 21.

The committee, whilst emphasising the importance of a reasonable degree of uniformity of street lighting on "traffic routes" presenting similar characteristics, expresses the opinion that the present system of administration (by a number of authorities) is not conducive to the achievement of uniform and effective lighting on "traffic routes." It is suggested that consideration should be given to the advisability of transferring the responsibility for the lighting of "traffic routes" to large administrative units, and to the proposal (made by various witnesses) that the cost of lighting such roads should be aided by grants from the national funds administered by the responsible Government department.

It is also recommended that adjoining authorities should confer together with the object of securing uniformity of lighting on routes of common interest.

The committee proposes that for "traffic routes" the lighting should be of a minimum standard which will enable drivers to proceed with safety at thirty miles per hour without the use of headlights.

It is recommended that power should be given to lighting authorities to control extraneous lighting so far as it may be seriously detrimental to street lighting.

Evidence given before the committee indicated that although extraneous lighting, i.e. incidental private lighting, illuminated signs, etc., occasionally may be helpful, it usually renders effective street lighting more difficult and may even increase risk of accident.

Uniformity of administration will be secured in respect of the lighting of the more important arterial roads by the Trunk Roads Act, 1936 (i), which places these roads under the direct control of the M. of T. As pointed out by witnesses before the departmental committee, a large measure of control over the lighting of other roads could be secured by the Ministry, if the Government include in the grants to local authorities in respect of highway maintenance a proportion of the cost of public lighting. [755]

London (i).—There are no main roads in London, hence L.G.A., 1888, sect. 11 (11) (j), although unrepealed, is not applicable. Sect. 29 of the L.G.A., 1929 (k), does not apply to London (sect. 45) (l). Powers as to street lighting are vested in metropolitan borough councils as authorities for streets. Sect. 90 of the Metropolis Management Act, 1855 (m), provides that all previous powers as to paving and lighting shall be vested in vestries. The powers of vestries were transferred to borough councils by the London Government Act, 1899, sect. 4 (n). The following provisions also apply:

Metropolis Management Act, 1855, sect. 130 (streets to be lighted, lamps, etc., set up and maintained and lighted with gas or otherwise) (o); sect. 158 (expenses to be paid out of rates (p) (see also London Government Act, 1899, sect. 10)) ; sect. 206 (penalty for damaging lamps, etc.) (q).

(i) 29 Halsbury's Statutes 183. And see note (aa), p. 459, *ante*.

(j) 10 Halsbury's Statutes 695.

(k) *Ibid.*, 903.

(l) L.G.A., 1929, s. 45; 10 Halsbury's Statutes 916.

(m) 11 Halsbury's Statutes 904.

(n) *Ibid.*, 1227.

(o) *Ibid.*, 917.

(p) *Ibid.*, 925. See also London Government Act, 1899, s. 10; 11 Halsbury's Statutes 1231.

(q) 11 Halsbury's Statutes 936.

Sect. 22 of the Metropolis Gas Act, 1860 (*r*), imposes on gas companies supplying gas within the Metropolis the duty of lighting all public lamps in streets which they are required by the local authority to light; to supply gas for the lamps according to their contract; provided that the companies shall not be compelled to light streets with lamps more than 75 yards apart. Sect. 23 (*s*) of the Act enables local authorities to provide and repair their own lamp-posts and lamps and, if they elect to burn by meter, to light and extinguish the lamps and defray expenses. The Act was amended as regards the City by the City of London Gas Act, 1868, which (*inter alia*) enables the gas companies to fix street lamp governors.

For the application to London of general provisions of the Acts relating to gas and electricity supply, see titles GAS and ELECTRICITY.

Powers as to the lighting of tunnels along the Thames are given to the L.C.C. in the private Acts authorising their construction, etc. Thames bridges vested in the L.C.C. are lighted by the council under sect. 59 of the L.C.C. (General Power) Act, 1930 (*t*). Lamps on embankment walls are lighted by the council, this duty having been placed on the council by the special Acts relating to the respective embankments. The powers as to lighting of certain embankments were transferred to the City and the borough councils by the Transfer of Powers (London) Order, 1933, but the duty of maintaining the lighting on embankment walls which were affected by that order was restored to the council by the Transfer of Powers (London) Order, 1934. [756]

(*r*) 8 Halsbury's Statutes 1245.
(*t*) 23 Halsbury's Statutes 363.

(*s*) *Ibid.*

STREET TRADING

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*See also titles : MARKETS AND FAIRS ;
HAWKERS AND PEDLARS ;
BYE-LAWS.*

Street Trading by Children and Young Persons.—The law on this subject is now contained in Part II. of the Children and Young Persons Act, 1933 (*a*). This Act, besides laying down certain general regulations also gives large powers to local authorities of making bye-laws on matters of detail and of adapting the Act in some respects to local conditions. "Child" means a person under the age of fourteen (sect. 107).

The employment of children under the age of twelve years is prohibited (sect. 18 (1)) (b). Children may not be employed in such a way as to interfere with their work at school, or for more than a certain number of hours; and no child may be employed in lifting or moving anything so heavy as to be likely to injure him (*ibid.*). The local authority (that is to say, the local education authority; see sect. 96 (1), and title EDUCATION AUTHORITY) may make bye-laws authorising the employment of children under twelve, by parents or guardians, in light agricultural or horticultural work; authorising the employment of children for one hour before attending school; prohibiting the employment of children in specified occupations; prescribing a minimum age for employment; and regulating hours and conditions of employment (sect. 18 (2)). A different local authority (namely the council of a county or of a county borough) may make bye-laws regulating the hours, holidays and conditions of young persons between the ages of fourteen and eighteen years (sect. 19).

Besides the foregoing general provisions which control the employment of children and young persons in all occupations, including street trading, sect. 20 of the Act specifically regulates street trading (c). No person under the age of sixteen may engage or be employed in street trading, except that the local authority (that is the council of a county or county borough) may pass a bye-law authorising the employment of a person between the ages of fourteen and sixteen by his parent in street trading (sect. 20 (1)).

The council of a county or of a county borough may make bye-laws regulating or prohibiting street trading by persons under eighteen years of age. Such bye-laws may prescribe the hours during which street trading by such persons may be permitted and may restrict it to certain places. They may also set up a system of licensing traders and attach conditions to the grant and revocation of licences and may require the licensees to wear a badge (sect. 20 (2)). The penalty for breach of any such bye-laws is, in the case of the young person concerned, a fine of twenty shillings for a first offence and forty shillings for subsequent offences, and in the case of the employer of such a person five pounds for a first offence and twenty pounds for subsequent offences (sect. 21). [757]

Street Trading by other Persons.—At common law and under the general statute law dealing with the user of highways a trader is liable to a prosecution if he carries on his business in such a way as to cause an obstruction of the highway (d) (see title HIGHWAYS). In the case, however, of a lawfully held market or fair a very considerable degree of obstruction may become perfectly legal (see title MARKETS AND FAIRS).

Under the L.G.As. of 1888 and 1933, and, in the case of boroughs, under the Municipal Corporations Act, 1882 (e), the council of a county

(b) 26 Halsbury's Statutes 181.

(c) A van boy employed by a shop selling loaves of bread to customers at their houses does not engage in street trading (*Stratford Co-operative Society, Ltd. v. East Ham Corp.,* [1915] 2 K. B. 70). The distinction between this and street trading is a fine one and those concerned with the enforcement of the Act would be well advised to study the dissenting judgment of ATKIN, J., in that case.

(d) Highway Act, 1835, s. 72; Town Police Clauses Act, 1847, applied to towns and urban districts by P.H.A., 1875, s. 171.

(e) The L.G.A., 1888, s. 16, and the Municipal Corporations Act, 1882, s. 23, being the sections under which such bye-laws may be made are now repealed and replaced by the L.G.A., 1933, ss. 249, 250, Sched. XI., Parts II. and III., but bye-

or of a borough enjoys wide powers of making bye-laws for the good rule and government of their area, and for the prevention and suppression of nuisances. It should be observed that the bye-laws of a county council have no force in the boroughs in the area (as to confirmation of such bye-laws, see title **BYE-LAWS**). Bye-laws have been widely made under these powers for suppressing undue noise in street trading.

Local authorities have powers under a number of Acts for dealing with particular aspects of street trading; for example, they can make bye-laws relating to weights and measures specifically adapted to street trading (*f*) (see title **WEIGHTS AND MEASURES**); they can also take steps to see that articles of food sold to the public by street traders are wholesome and not exposed to contamination (see title **FOOD AND DRUGS**).

Restrictions on Sunday trading apply to street traders (*g*). [758]

London.—The relevant provisions of the Children and Young Persons Acts and of the Shops Acts apply to London. The City corporation is the local authority for the purpose of street trading in the City and the L.C.C. for the rest of the county (*h*). The L.C.C. (General Powers) Act, 1927, sects. 30—50 (*i*), makes provision for the regulation of street trading. Stall, etc., holders in stationary positions in streets must be licensed annually by the borough council (sects. 30, 31 and 34). Borough councils may revoke, vary or refuse a licence for certain reasons, including misconduct and inconvenience to traffic (sect. 31). Licences must be in the form prescribed by the Secretary of State and may prescribe (*inter alia*) the street or area, the class or classes of articles to be sold, the days and times and the number of barrows, etc. (sect. 31). The Secretary of State may, for the purpose of preventing interference with traffic, by order limit the trading which may be carried on (sect. 32). A fee of 5s. must be paid for a licence (sect. 33). Borough councils must, if required, deliver particulars of grounds for refusal, etc., and appeal may be made by persons aggrieved by refusal, etc., to a petty sessional court (sect. 35). Borough councils shall make bye-laws (sect. 36) and may charge for removing refuse or other services (sect. 37). The Act does not restrict the right of persons holding a pedlar's certificate or a hawker's licence (sect. 40). A saving is provided for local markets and fairs (sect. 50).

See London note to title **HIGHWAY NUISANCES** for offences as follows :

Metropolitan Paving Act, 1817—Barrows, etc., on footways or carriageways.

London Hackney Carriage Act, 1853—Carrying placards and advertisements.

Metropolitan Streets Acts—Depositing goods, loading coal carts, etc. (except costermongers acting in accordance with the police regulations).

City of London (Street Traffic) Acts and City of London (Police) Act—Street trading, etc., in City.

laws already made under the repealed sections are expressly preserved and are still effective.

(*f*) See, for example, byelaws, dated August 25, 1934, made by the Surrey County Council to regulate the sale of coal in the streets.

(*g*) Shops, Sunday Trading Restriction Act, 1936, s. 14 (1); Retail Meat Dealers' Shops (Sunday Closing) Act, 1936, s. 1.

(*h*) Children and Young Persons Act, 1933, ss. 96, 97; 26 Halsbury's Statutes 282, 284; Shops Act, 1934, s. 18; 27 Halsbury's Statutes 237.

(*i*) 11 Halsbury's Statutes 1886—1892.

The L.C.C. has made a bye-law under the Municipal Corporations Act, 1882 (sect. 23) (k), and L.G.A., 1888, sect. 16 (l), prohibiting street shouting by hawkers, newsvendors, etc. [759]

(k) 10 Halsbury's Statutes 584.

(l) *Ibid.*, 698; see now L.C.C. (General Powers) Act, 1934, Part VI.

STREET TRAFFIC

See ROAD TRAFFIC.

STREETS

See ROADS CLASSIFICATION.

STREETS, BRIDGES OVER

See BRIDGES OVER STREETS.

STREETS, NAMING OF

See NAMING OF STREETS.

SUB-COMMITTEES

See COMMITTEES.

SUBSIDENCE

*See also titles : HIGHWAY NUISANCES ;
- MINES AND MINERALS.*

The most usual cause of subsidence of highways is excavation by public utility undertakers for the purpose of laying pipes, but in some localities serious trouble of this character arises as the result of underground excavation in connection with the recovery of minerals.

Sect. 20, P.H.A., 1936, vests in local authorities all sewers within the meaning of the P.H.A., 1875, and, with few exceptions, all other sewers.

By sect. 14 of the 1936 Act, local authorities are rendered responsible for providing such public sewers as may be necessary for effectually draining their district, and in breaking open streets for this purpose they are required to observe the provisions of sect. 279, which incorporates with modifications the provisions of sects. 28 and 30—34 of the Waterworks Clauses Act, 1847.

Sect. 279 also applies to any person, not being a local authority, who is empowered by the Act to open up a street for the purpose of constructing, laying or maintaining a sewer, drain or pipe.

The Waterworks Clauses Act, 1847, sects. 28—34, and the Gas Works Clauses Act, 1847, sects. 6—11 whilst conferring the right to break up streets for the purposes authorised by the Acts, require the work to be done under the supervision of the persons having control of the street. The Acts provide that such openings shall be filled in and the street reinstated without delay and kept in repair for a period of three months from the time after making good, and for such further time, if any, not being more than twelve months in the whole, as the soil broken up shall continue to subside.

Generally, the foregoing conditions apply to all breaking up of streets authorised by statute, including local authorities, public utility undertakers, and other bodies and persons.

Apparently the supervision of the work of opening up of streets and laying mains by the persons having the control of the streets does not impose upon such persons any legal responsibility for the proper execution of the work, or relieve those who carry out the work from liability in connection therewith.

It will be observed that the Acts appear to confine the supervision by the street authority to the work of breaking up the street and constructing the works, and that the respective sections dealing with reinstatement contain no reference to supervision. Apparently it was anticipated that liability for maintenance over the period stated would be sufficient guarantee that the filling in and making good would be done with reasonable efficiency. This is not always the case, however, particularly when the work is let out to contract. Some soils are difficult to consolidate effectively. For instance, clay which is thrown out in lumps may bake hard before being returned to the trench, and

can be consolidated only by very thorough punning, aided by the application of water; and except in soils which are specially favourable to re-consolidation, it is desirable to use power-operated pavers.

In practice, a wise authority exercises supervision to an even greater extent in respect of filling in and reinstatement than in regard to the opening up, but there is often a constant struggle with the persons responsible for the work to ensure proper consolidation. The extent to which undertakers can be compelled to comply with the directions of the highway authority is a matter of doubt. It will be noted also that the continuing liability beyond the before-mentioned period of three months relates only to subsidence of the soil. Apparently liability for wear and tear of the road surface is limited to the shorter period.

The Acts provide that in the case of unnecessary delay in completing the work for which the street is opened up, or in filling in the ground or reinstatement of the street, or failure to repair as required by the Act, the persons having control of the street may execute the necessary work at the expense of the persons making the opening.

The protection given to street authorities in respect of subsidence caused by the acts of others, by the before-mentioned statutes, which were drafted many years ago when conditions were very different from what they are now, is often found to be inadequate.

Local authorities are frequently involved in heavy expenditure in connection with damage to roads arising after the expiration of the period of twelve months provided by the Acts. The filling material of trenches which are relatively wide or deep, and particularly those which are both wide and deep, may continue to subside for several years. Sometimes the effect extends far beyond the limits of the excavation itself and may involve the entire reconstruction of the road.

The filling of deep trenches which are executed in tunnel or partly in tunnel and partly in "open cut," is frequently difficult to supervise, and, unless the work is done thoroughly and with care, the soil over the tunnels may gradually subside, but the effect may not be apparent at the surface until the lapse of many months, or even years. In some circumstances, depending largely upon the nature of the soil, it is possible reasonably to ensure freedom from subsidence of the surface only by filling the tunnel with concrete—this need not be of high quality—or by constructing a substantial concrete slab, preferably reinforced, near the road surface, across the trench, with a sufficient bearing upon the solid ground on each side.

It is often difficult, or impossible, to induce undertakers to bear the cost of these precautions, and local authorities are compelled, in their own interest, to do the work at their own expense. It is doubtful whether generally such work would fall within the liability of the undertaker, but it would be reasonable to argue, in some cases, that it is impossible to "reinstate and make good the road" properly without making special provision of this nature.

In some cases a trench is opened in such a position as to leave between the edge of the trench and the kerb a narrow strip of road which must necessarily be reconstructed when the trench is made good. At times also two or more trenches are opened so near together that the trenches cannot be made good without reconstructing the roadway between them. Apparently the highway authority is unable to recover from

the persons responsible for the works any portion of the extra cost involved in reconstructing the additional areas of roadway.

Sect. 27 of the Highways and Locomotives (Amendment) Act, 1878, deals with the ownership and working of minerals under highways. The section provides that notwithstanding anything contained in sect. 68, P.H.A., 1848, or sect. 149, P.H.A., 1875, all mines and minerals under any disturnpiked road or highway vested, or which may become vested in an urban sanitary authority, shall be the property of the person to whom they would have belonged if such road or highway had not become so vested.

The owner of any such mines and minerals is given the same power to work them and of recovering the same or other minerals as he would have had if the road or highway had not become vested in the sanitary authority, but in doing so he must not cause damage to the road or highway. Prior to the passing of this Act, however, the courts had already held that the vesting of a highway in a local authority did not pass to the authority the freehold or the land or any property in the street other than the surface of the street and such part of the soil as is or can be used for the ordinary purposes of the street (a).

In a later judgment, JAMES, L.J., dealt at length with the previous decisions in reference to the words "*vest in.*" He said that these made it quite clear that no *stratum* or portion of the soil, defined or ascertainable like a vein of coal, or anything of the kind passed to the authority who had only, with the surface, such right below as was essential to the maintenance, occupation, and exclusive possession of the street, and the making and maintaining of the street for the use of the public (b). Where a highway has been damaged as the result of the working of minerals, the local authority is entitled to recover from the person responsible for the damage the cost only of making the highway as commodious to the public, within reasonable limits, as it was before, and not necessarily the cost of restoring it to its former level (c). [760]

London.—There would appear to be no provisions applicable to London relating specifically to the repair by a highway authority of highways damaged through subsidence. The principles of interpretation of general powers or duties to repair would be the same as elsewhere. [761]

(a) *Hinde v. Chorlton* (1866), L. R. 2 C. P. 104; 15 L. T. 472; *Bagshaw v. Buxton Local Board* (1875), 1 Ch. D. 220; 40 J. P. 197; 34 L. T. 112.

(b) *Rolls v. St. George the Martyr, Southwark (Vestry of)* (1880), 14 Ch. D. 785; 44 J. P. 680; 48 L. T. 140.

(c) *Wednesbury Corp. v. Lodge Holes Colliery Co., Ltd.*, [1907] 1 K. B. 78; 71 J. P. 73; *A.-G. v. Conduit Colliery Co.*, [1895] 1 Q. B. 301; 59 J. P. 70.

SUBSIDIES

See GENERAL EXCHEQUER GRANTS; HOUSING SUBSIDIES.

SUBSTANTIVE GRANTS

See EDUCATION FINANCE.

SUBWAYS

See ROAD AMENITIES.

SUMMARY PROCEEDINGS

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*See also titles : JUSTICES OF THE PEACE ;
JUVENILE COURTS.*

Introduction.—It is not possible within the limits of the present work to deal fully with the law relating to Summary Proceedings or even to refer to all the provisions of the Summary Jurisdiction Acts (*a*) and Rules by which the procedure of Courts of Summary Jurisdiction is regulated. It is, however, proposed to present an outline of the various matters which arise in a summary proceeding from its inception to the steps which may require to be taken after the hearing. Mention will have to be omitted of many exceptions and modifications, as also of those matters which are not wholly within the framework of the Summary Jurisdiction Acts, such as rates, bastardy, lunacy and licensing.

A legal proceeding only becomes a matter for summary jurisdiction when some statute so enacts ; but many thousands of such statutes are in force. Summary jurisdiction is exercised by justices of the peace sitting either alone or in petty sessions ; or, in towns where special Acts apply, by a stipendiary or other magistrate sitting alone, but vested with the powers of two justices.

(*a*) *I.e.* the Summary Jurisdiction Act, 1848, and Summary Jurisdiction Act, 1879 ; and any Act, past or future, amending those Acts or either of them (Interpretation Act, 1889, s. 18 (7), (10) ; 18 Halsbury's Statutes 997).

The jurisdiction of justices is dealt with under the title JUSTICES OF THE PEACE, and it is only necessary here to mention that generally a justice for a county has jurisdiction throughout the county, save where some place within the county is entitled to a separate and exclusive jurisdiction ; whilst the jurisdiction of a justice for a borough is limited to that borough, and in the absence of some exclusive provision is there concurrent with the jurisdiction of county justices. [762]

Drafting of Forms.—Forms which may be used in summary matters are given in the Schedule to the Summary Jurisdiction Rules, 1915 (b). Forms to the like effect may be used.

The Criminal Justice Act, 1925, sect. 32 (c) enacts :

- (1) Every information, complaint, summons, warrant or other document . . . shall be sufficient if it contains a statement of the specific offence with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.
- (2) The statement of the offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and, if the offence charged is one created by statute, shall contain a reference to the section of the statute creating the offence.
- (3) After the statement of the offence, necessary particulars of the offence shall be set out in ordinary language in which the use of technical terms shall not be required.
- (4) Any information, complaint, summons, warrant or other document which is in such form as would have been sufficient in law if this Act had not passed shall notwithstanding anything in this section continue to be sufficient in law.

It follows, therefore, that the old forms may still be used if preferred. In that case the offence charged must be set forth with precision, carefully following the words of the statute under which the charge is made (d), and including in express terms every ingredient of the offence (e). But any exception, exemption, proviso, excuse or qualification which may be proved by the defendant in answer to the charge need not be specified or negatived (f), so long as it is not a necessary ingredient of the offence charged (g). [763]

The Information or Complaint.—The first step in summary proceedings is to “ lay an Information ” or “ make a Complaint ” before a justice within whose jurisdiction the alleged offence or matter of complaint has arisen (h); and upon this (save in the few cases where an application for an order is authorised to be made *ex parte* (h)) a summons or warrant is issued to ensure the appearance of the defendant at the

(b) S.R. & O., 1915, No. 200, as amended by S.R. & O., 1932, No. 1084; and 1935, No. 1088. See Stone.

(c) 11 Halsbury's Statutes 415.

(d) *Re Grant* (1857), 21 J. P. Jo. 70; 33 Digest 350, 597; *Ex parte Perham* (1859), 23 J. P. 793; 33 Digest 350, 598.

(e) *R. v. Turner* (1816), 1 Moo. P. C. 289; 14 Digest 480, 4552.

(f) Summary Jurisdiction Act, 1879, s. 39 (2); 11 Halsbury's Statutes 344.

(g) *Smith v. Moody*, [1903] 1 K. B. 56; 33 Digest 351, 603.

(h) Summary Jurisdiction Act, 1848, s. 1; 11 Halsbury's Statutes 270.

hearing or that, if he do not so appear, he shall at least have had timely notice and opportunity so to do.

For many offences, however, a power of arrest without warrant is given to the police, and in some cases a similar power of arrest is given to an official or private individual. Where a defendant is so brought before a summary court without preliminary process he is entitled to claim an adjournment (*i*) ; and he may also claim that an information be laid and a summons issued thereupon (*k*) ; but if he does not make such claim he is deemed to have waived his right, and the hearing proceeds as if in fact he had appeared upon a summons duly issued.

An information is to be laid where it is alleged that an offence or act has been committed for which upon summary conviction a defendant may be imprisoned or fined or otherwise punished ; whereas a complaint is to be made where a justice or justices have power to make an order, whether for the payment of money or otherwise (*l*). The forms of an information or complaint are almost identical, and the subsequent proceedings are very similar, and therefore the two matters are herein-after dealt with together (any points of dissimilarity being noted), except in the case of a civil debt, as to which a special note is appended.

An information must be for one offence only ; if there be more than one offence alleged each should be the subject of a separate information ; and a similar rule applies to complaints (*m*).

An information or complaint need not be in writing unless so required by the Act upon which it is framed (*n*), but it is convenient and a protection to the justice to put the matter on record in writing save where it is trivial or simple. The complaint or information need not be upon oath unless that be required by the particular statute (*o*) ; but where a warrant of arrest is to be issued the information or complaint must be on oath (*p*) ; and it is then the practice to require it also to be in writing.

The information or complaint should state (in addition to the offence or matter of complaint) the place where it is laid, in order that it may appear that the justice receiving it was acting within the local limits of his jurisdiction ; the date when laid or made and the date of the offence, in order that it may appear that it was laid in due time ; the name, address and description of the informant, in order that, in those cases where it is material, it may appear that he was qualified to inform ; the name and address of the defendant ; and the place where the matter in question is alleged to have occurred, in order to show that it is within the jurisdiction of the justice issuing process. If the information or complaint is to be taken on oath this fact also should be recited. [764]

Limitation of Time.—Proceedings must be commenced by laying the information or making the complaint, within six calendar months from the time when the matter of such information or complaint arose ; except where the statute under which the matter arises substitutes some other limitation of time (*q*). There are many such exceptions. Time may be curtailed, as for instance under the Food and Drugs Act, 1938, sect. 80 (1) (*r*), where a sample has been procured under the Act, any

(*i*) *R. v. Shaw* (1865), 34 L. J. (M. C.) 169 ; 15 Digest 686, 7416.

(*k*) *Blake v. Beech* (1876), 40 J. P. 678 ; 33 Digest 354, 639.

(*l*) Summary Jurisdiction Act, 1848, s. 1 ; 11 Halsbury's Statutes 270.

(*m*) *Ibid.*, s. 10 ; *ibid.*, 277.

(*n*) *Ibid.*, s. 8 ; *ibid.*, 276.

(*o*) *Ibid.*, s. 10 ; *ibid.*, 277.

(*p*) *Ibid.*, ss. 2, 7, 18 ; *ibid.*, 272, 275, 279.

(*q*) *Ibid.*, s. 11 ; *ibid.*, 278.

(*r*) 31 Halsbury's Statutes 303.

prosecution in respect of the article stamped shall not be commenced after the expiration of twenty-eight days from the time of procuring the sample; although that limitation does not apply to proceedings in respect of other offences under the same Act (*s*). The justice before whom the information is laid may, however, allow the issue of a summons after 28 days and not later than 42 days, if satisfied that it was not practicable to lay the information earlier. On the other hand a longer period may be allowed. Proceedings for an offence of obtaining a motorist's driving licence or of driving a motor vehicle whilst disqualified, may be brought within the usual period of six months, or within a period which exceeds neither three months from the date upon which it came to the knowledge of the prosecutor that the offence had been committed nor one year from the date of the commission of the offence, whichever period is the longer (*t*). Nine months is allowed for collecting sums disallowed or surcharged by a district auditor (*u*).

Where the offence or matter of complaint is of a continuing nature the limitation of time runs from the last date upon which the act or acts constituting the offence or matter of complaint is alleged to have taken place (*a*). Where a sum of money is recoverable summarily the time runs from the date of the first demand upon the defendant for payment (*b*) and a later demand will not defeat the protection afforded to the debtor by effluxion of time (*c*).

Where an indictable offence is to be dealt with summarily under sect. 24 of the Criminal Justice Act, 1925 (*d*), no question of limitation of time arises, for the information has been laid under the Indictable Offences Act, 1848, and not under the Summary Jurisdiction Acts.

The day upon which the offence was committed or the matter of complaint arose is excluded in computing the period of limitation (*e*).
[765]

Who may Institute Proceedings.—An information may be laid or a complaint made by the informant or complainant in person, or by his counsel or solicitor or other person authorised on his behalf (*f*). An Inspector of Police, being duly authorised so to do by an Inspector of Mines, was held a proper person to lay an information on behalf of the latter (*g*). In that case a prosecution could only be instituted by an Inspector of Mines or with the consent in writing of a Secretary of State; and similarly a number of other statutes provide that certain proceedings can only be taken by or on behalf of some specified legal or other public authority (*h*). Where a person is authorised to act on behalf of such an authority the authorisation may be general and not limited to any particular proceedings (*i*); but if proceedings are not to be instituted

(*s*) *Cook v. White*, [1896] 1 Q. B. 284; 25 Digest 101, 241.

(*t*) Road Traffic Act, 1930, s. 7 (5); 23 Halsbury's Statutes 616.

(*u*) L.G.A., 1933, s. 233 (3).

(*a*) *Higgins v. Northwich Union* (1870), 34 J. P. 452, 806; 36 Digest 238, 769; *Meyer v. Harding* (1867), 32 J. P. 421; 33 Digest 414, 1252.

(*b*) *Dennerley v. Prestwich U.D.C.* (1929), 93 J. P. 287; affirmed, [1930] 1 K. B. 334; Digest (Supp.).

(*c*) *Harpin v. Sykes* (1885), 49 J. P. 148; 25 Digest 335, 367.

(*d*) 11 Halsbury's Statutes 411.

(*e*) *Williams v. Burgess* (1840), 12 Ad. & E. 635; 14 Digest 153, 1279; *Radcliffe v. Bartholomew*, [1892] 1 Q. B. 161; 14 Digest 153, 1280.

(*f*) Summary Jurisdiction Act, 1848, s. 10; 11 Halsbury's Statutes 277.

(*g*) *Foster v. Fyfe* (1896), 60 J. P. 423; 1 Digest 276, 75.

(*h*) E.g. Road Traffic Act, 1930, s. 95; 23 Halsbury's Statutes 674.

(*i*) *Westminster Coaching Services v. Piddesden* (1933), 97 J. P. 185; Digest Supp.); *Tyler v. Ferris*, [1906] 1 K. B. 94; 44 Digest 138, 67.

except by order of some authority there must be an express order from the authority with regard to the particular prosecution (*k*). On the other hand upon proof, by production of the minute book of the Guardians, that an officer had been duly "appointed . . . to enforce the provisions of the Vaccination Act," it was held that he might of his own motion take proceedings without further authority (*l*), and he might do so even against the express order of the appointing authority (*m*).

A complaint usually relates to some private or individual matter, such as the recovery of a civil debt or other sum of money or the making of an order in favour of some person or authority; and in such case generally only the person or authority concerned may be the complainant. The general rule with regard to the institution of any proceedings is that where an enactment is merely for the protection of the private rights of individuals, and any penalty is given to the party aggrieved by way of redress, that party is the proper person to lay an information (*n*); but if the enactment be for the benefit of the public at large then any member of the public may be the informant (*o*).

Thus a complaint for a common assault to be tried summarily may be made only by or on behalf of the person assaulted (*p*), for a conviction upon such proceedings is a bar to the alternative remedy by way of an action for damages (*q*). But that remedy would not be barred if the assault were dealt with as a common law offence punishable upon indictment (*r*), or summarily by consent of the accused (*s*); and therefore such proceedings may be initiated by some one other than the person assaulted or his agent (*t*). [766]

The Summons or Warrant.—One justice may receive an information or complaint and may grant thereon a summons or (in proper case) a warrant, even though two or more justices must hear the case (*u*). The issue of a summons by a justice who did not receive the information is improper, but the irregularity may be waived (*a*); and the issue of a warrant without a sworn information may be waived by a defendant making his defence at the hearing without objection to the irregularity (*b*).

In the case of an information, it is within the discretion of the justice whether a summons or warrant should be issued in the first instance (*c*); although a warrant should not be issued where a summons would probably prove equally effective (*d*). There is no power however to issue a warrant in the first instance upon a complaint, but if a defendant does

(*k*) *Jones v. Wilson*, [1918] 2 K. B. 36; 33 Digest 95, 643.

(*l*) *Bramble v. Lowe*, [1897] 1 Q. B. 283; 38 Digest 203, 388.

(*m*) *Moore v. Keyte*, [1902] 1 K. B. 768; 38 Digest 203, 389.

(*n*) *R. v. Hicks* (1855), 4 El. & B. 638; 33 Digest 324, 391.

(*o*) *Cole v. Coulton* (1860), 2 El. & El. 695, *per Cockburn, C.J.*; 1 Digest 330,

465.

(*p*) Offences against the Person Act, 1861, s. 42; 4 Halsbury's Statutes 612.

(*q*) *Ibid.*, s. 45; *ibid.*, 614.

(*r*) *Nicholson v. Booth and Naylor* (1888), 52 J. P. 662; 14 Digest 169, 1468.

423. (*s*) Criminal Justice Act, 1925, s. 24, Sched. II. (3); 11 Halsbury's Statutes 411,

(*t*) *R. v. Gaunt* (1895), 60 J. P. 90; 14 Digest 169, 1470.

(*u*) Summary Jurisdiction Act, 1848, s. 29; 11 Halsbury's Statutes 288.

(*a*) *R. v. Fletcher* (1884), 48 J. P. 407; 3 Digest 400, 340.

(*b*) *R. v. Hughes* (1879), 4 Q. B. D. 614; 33 Digest 336, 476.

(*c*) Summary Jurisdiction Act, 1848, s. 2; 11 Halsbury's Statutes 272.

(*d*) *O'Brien v. Brabner* (1885), 49 J. P. 227; 33 Digest 333, 452.

not appear at the hearing then upon proof on oath that a summons has been served upon him a reasonable time before the hearing a warrant of arrest may be issued (save in the case of a civil debt) ; and there is similar power in the case of an information (e). A defendant may appear in answer to a summons by his counsel or solicitor ; and it would not then be proper to issue a warrant to enforce personal attendance (f).

A summons or warrant should state shortly the matter of the information or complaint ; but no objection may be taken or allowed for any defect in substance or in form, or for any variance with the evidence adduced for the prosecution at the hearing (g). This does not extend, however, to cover a defect in a matter of jurisdiction, as for instance where a condition precedent has not been fulfilled (h) ; nor to allow, as a matter of variance, the conviction of a defendant for an offence other than that alleged (i).

A summons to a defendant may usually be served in England by being sent in a prepaid registered letter addressed to him at his last or usual place of abode ; but if he do not appear in answer either personally or by his advocate and the court is not otherwise satisfied that the summons has come to the knowledge of the defendant the summons is ineffective, and a fresh summons may be issued on the original complaint or information (k). In default or in lieu of service by post a summons may be served by a constable or other peace officer or other person to whom it is delivered, either upon the defendant personally or by leaving it with some person for him at his last or most usual place of abode (l) a reasonable time before the hearing (m) ; and the court may thereafter proceed to hear the case in the absence of the defendant upon proper proof of service and upon being satisfied that the summons has actually come to his notice (n).

A few statutes provide for a special mode of service ; and under the Summary Jurisdiction (Process) Act, 1881 (o), a summons issued in England may be served in Scotland, or in the Isle of Man (p), or in any other part of the British Islands or Channel Islands to which the provisions of the Act may in the future be applied (q).

A warrant of arrest may be addressed either to a particular constable or to all the constables of the district in which the issuing justice has jurisdiction (r). If the warrant be for the arrest of a person charged with an offence it may be executed on any day and at any time and by any constable, even though the warrant may not be in his possession at the time ; but in that case the warrant must be shown to the person arrested, upon demand, as soon as practicable after the arrest (s). A

(e) Summary Jurisdiction Act, 1848, s. 2 ; 11 Halsbury's Statutes 272.

(f) *R. v. Thompson, Ex parte Martin*, [1909] 2 K. B. 614 ; 33 Digest 386, 472.

(g) Summary Jurisdiction Act, 1848, ss. 1, 3 ; 11 Halsbury's Statutes 271, 272.

(h) *Key v. Bastin*, [1925] 1 K. B. 650 ; 37 Digest 538, 8.

(i) *Martin v. Pridgeon* (1859), 1 E. & E. 778 ; 33 Digest 344, 545.

(k) Service of Process (Justices) Act, 1983, s. 1 (2) ; 26 Halsbury's Statutes 557.

(l) Summary Jurisdiction Act, 1848, s. 1 ; 11 Halsbury's Statutes 271.

(m) *R. v. Benn* (1795), 6 T. R. 198 ; 18 Digest 408, 1431.

(n) *Re William Smith* (1875), L. R. 10 Q. B. 604 ; 33 Digest 330, 434 ; *sub nom.*

Ex parte Smith, 39 J. P. 618.

(o) 11 Halsbury's Statutes 352.

(p) Summary Jurisdiction Process (Isle of Man) Order, 1928 (S.R. & O., 1928, No. 377).

(q) Criminal Justice Administration Act, 1914, s. 40 (2) ; 11 Halsbury's Statutes 387.

(r) Summary Jurisdiction Act, 1848, s. 3 ; *ibid.*, 272.

(s) Criminal Justice Act, 1925, s. 44 ; *ibid.*, 421.

warrant remains in full force until executed (*t*), and it may be executed without backing anywhere in England or Wales by any constable to whom it was originally directed or by any constable of the place in which it is in fact executed (*u*). A warrant upon being backed may be executed in Scotland (*a*) ; as also in Ireland, the Isle of Man, and the Channel Islands (*b*).

Any warrant of arrest may be endorsed by the issuing justice, directing that the person named therein be released upon his own recognisance, with or without sureties, conditioned for his appearance before the appropriate court at a specified place and time (*c*). [767]

Witnesses.—A justice may issue a summons to any person in England or Wales (*d*), upon being satisfied upon oath that such person is likely to be a material witness in a case and that he will not attend voluntarily at the hearing. The summons must be served a reasonable time before the hearing and "conduct money" sufficient to cover out-of-pocket expenses should be tendered. If the person does not appear as required a warrant may be issued for his arrest (*e*) ; or a warrant may be issued in the first instance if it appears likely that a summons may be ineffective (*e*). The summons may require that documents or other articles likely to be relevant to the case be produced by the witness (*f*).

A witness who, on appearing upon summons or warrant, improperly refuses to give evidence, may be ordered to be imprisoned for not exceeding seven days, unless in the meantime he consents to answer (*e*).

During the hearing of a case witnesses may be ordered out of court ; but if a witness remains in court his evidence cannot be rejected for that reason alone (*g*) ; and an informant or complainant cannot be excluded, for he is entitled to conduct his own case (*h*). [768]

The Court.—A summary complaint or information must be "heard, tried, determined and adjudged" by a court of summary jurisdiction (*i*) sitting in an open and public court to which the public generally may have access (*k*). The court will consist of one or two or more justices, as may be directed by the particular statute under which the proceedings are taken or by some general enactment (*k*) ; and there must be at least two justices where proceedings arise under the Summary Jurisdiction Act, 1879, or under a later statute, unless there be some express provision to the contrary (*l*). One such exception to the general rule is the case of an offence of drunkenness under the Licensing Act, 1872, sect. 12, which is still triable by one justice (*m*).

(*t*) Summary Jurisdiction Act, 1848, s. 3 ; 11 Halsbury's Statutes 272.

(*u*) Criminal Justice Act, 1925, s. 31 (3) ; *ibid.*, 414.

(*a*) Summary Jurisdiction (Process) Act, 1881, s. 4 ; *ibid.*, 352.

(*b*) Indictable Offences Act, 1848, ss. 12, 13, and Summary Jurisdiction Act, 1848, s. 3 ; 4 Halsbury's Statutes 488, 489, and 11 Halsbury's Statutes 273.

(*c*) Criminal Justice Administration Act, 1914, s. 21 ; *ibid.*, 381.

(*d*) Criminal Justice Act, 1925, s. 31 (4) ; *ibid.*, 414.

(*e*) Summary Jurisdiction Act, 1848, s. 7 ; *ibid.*, 275.

(*f*) Criminal Justice Administration Act, 1914, s. 29 ; *ibid.*, 383.

(*g*) *Chandler v. Horn* (1842), 2 M. & R. 423 ; 14 Digest 265, 2697.

(*h*) *Selfe v. Isaacson* (1858), 1 F. & F. 194 ; 22 Digest 455, 4749.

(*i*) Interpretation Act, 1889, s. 13 (11) ; 18 Halsbury's Statutes 997 ; *Boulter v. Kent JJ.* (1897), 61 J. P. 532 ; 16 Digest 99, 6.

(*k*) Summary Jurisdiction Act, 1848, s. 12 ; 11 Halsbury's Statutes 278.

(*l*) Summary Jurisdiction Act, 1879, s. 20 (9) ; *ibid.*, 332.

(*m*) Criminal Justice Administration Act, 1914, s. 38 ; *ibid.*, 386.

The open and public court must be either a petty sessional court-house (*n*), that is, a court-house or other place at which justices usually meet to hold special or petty sessions (*o*), or in the case of county justices an occasional court-house, which may be a police station or other place duly appointed to be so used when required (*p*). The requirement as to sitting in open court does not however apply to a justice when acting ministerially, as in hearing an application for process or in doing any other matter preliminary to the hearing or consequent thereupon (*q*). In a few instances justices are specially empowered to hear a case otherwise than in open court; but the rule is that a court must not exclude the public on any ground, whether of public morality or decency or otherwise, unless it is clearly necessary so to do in order that justice may be done (*r*).

The powers of a court of summary jurisdiction sitting in an occasional court-house are strictly limited; the sum (including costs) adjudged to be paid by any conviction or order must not exceed twenty shillings, and any period of imprisonment that may be imposed must not exceed fourteen days; and the same limitations apply to a justice sitting alone in a petty sessional court-house (*s*). But a court with such limited powers may adjourn the hearing of a case to the next practicable sitting of a court with full powers (*t*), that is to say a petty sessional court, consisting of two or more justices sitting in a petty sessional court-house (*u*).

There are special provisions relating to the trial of juvenile offenders, as to which see that title and also title JUVENILE COURT; but a child or young person charged jointly with an adult may be dealt with by the same court as the latter (*a*), or the court may remit the juvenile offender to a juvenile court, either for his case to be heard there or for that court to sentence him upon a finding of guilt by the original court (*b*).

The right of the public to have access to the court does not extend to a person under the age of seventeen years, unless he be an infant in arms or be required as a witness or for some other purpose in connection with a case, or be there in the course of his employment (*c*). [769]

The Hearing.—If a defendant appears before justices in a matter in which they have jurisdiction it is immaterial, so far as their right to hear the case is concerned, whether the defendant is before them voluntarily or otherwise, legally or illegally (*d*). But appearance by the defendant will not of itself give jurisdiction so as to enable justices to try a case which otherwise they could not deal with (*e*); and appearance on protest will not cure an irregularity in procedure in a matter essential to jurisdiction (*f*). Where the defendant wishes to raise any question

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- (*n*) Summary Jurisdiction Act, 1879, s. 20 (2); 11 Halsbury's Statutes 331.
 - (*o*) Interpretation Act, 1889, s. 13 (13); 18 Halsbury's Statutes 997.
 - (*p*) Summary Jurisdiction Act, 1879, s. 20 (4), (5); 11 Halsbury's Statutes 331.
 - (*q*) Summary Jurisdiction Act, 1848, s. 29; *ibid.*, 288.
 - (*r*) *Scott v. Scott*, [1913] A. C. 417; 16 Digest 180, 276.
 - (*s*) Summary Jurisdiction Act, 1879, s. 20 (7); 11 Halsbury's Statutes 331.
 - (*t*) *Ibid.*, s. 20 (11); *ibid.*, 331.
 - (*u*) Interpretation Act, 1889, s. 13 (12); 18 Halsbury's Statutes 997.
 - (*a*) Children & Young Persons Act, 1933, s. 46; 26 Halsbury's Statutes 200.
 - (*b*) *Ibid.*, s. 56; *ibid.*, 205.
 - (*c*) *Ibid.*, s. 36; *ibid.*, 195.
 - (*d*) *R. v. Hughes* (1879), 4 Q. B. D. 614; 14 Digest 168, 1459.
 - (*e*) *Johnson v. Colam* (1875), L. P. 10 Q. R. 544; 33 Digest 318, 304.
 - (*f*) *Dixon v. Wells* (1890), 25 Q. B. D. 249; 33 Digest 328, 410.

of irregularity of process in bringing him before the court he should do so before the case is gone into, for if he contests the matter on its merits he is deemed to have waived the informality (g).

Appearance in answer to a summons may be made by a defendant either personally or by his counsel or solicitor (h). On a summary charge other than assault, for which a defendant on conviction is liable to imprisonment for a term exceeding three months, he is entitled to claim to be tried by a jury (i); and where the defendant in such a case is a corporation a duly appointed representative may make the claim on behalf of the corporation (k), but for other purposes the corporation should appear by solicitor or counsel.

If the prosecutor does not appear at the appointed time and place either personally or by his advocate the case must be dismissed unless the court thinks proper to adjourn the hearing upon such terms as it may think fit (l). If however the prosecutor appears but the defendant does not, the court upon being satisfied that the summons has come to the notice of the defendant, may proceed to hear the case *ex parte*; or in a proper case it may issue a warrant to secure the attendance of the defendant (m). The court has ample powers to adjourn the hearing either before going into the case or in the course of the hearing, and on adjournment may either suffer the defendant to go at large, or admit him to bail, or remand him in custody (n).

The complainant or informant (if the real prosecutor) is at liberty to conduct his own case and to examine and cross-examine the witnesses and to give evidence (o); and the defendant has the same rights (o); and each if he wishes may be represented by solicitor or counsel (p). The court may grant legal aid to a defendant where it appears to be in the interests of justice that he should be represented by a solicitor and the court is satisfied that the defendant is not able to pay for such defence (q).

It is essential that the defendant should know in all cases exactly what he has to meet before the case is gone into (r), and if he be present the charge or matter of complaint is to be stated to him (s). Then if the charge is one in respect of which a defendant has a right to claim trial by jury, in the circumstances previously mentioned, he must be informed of that right; and omission to do so cannot be waived (t). If he elects to take advantage of the right the case thereafter must be dealt with as an indictable offence (u); but if the right is not claimed (or the defendant being a corporation does not appear (a)) the case proceeds on ordinary summary lines.

The procedure is based mainly upon the Summary Jurisdiction Act, 1848, sect. 14. The defendant must be asked whether he pleads guilty

(g) *R. v. Berry* (1859), Bell C. C. 46; 15 Digest 674, 7287.

(h) Summary Jurisdiction Act, 1848, s. 13; 11 Halsbury's Statutes 279.

(i) Summary Jurisdiction Act, 1879, s. 17 (1); *ibid.*, 329.

(k) Criminal Justice Act, 1925, s. 33 (5), (6); *ibid.*, 415.

(l) Summary Jurisdiction Act, 1848, s. 13; *ibid.*, 279.

(m) *Ibid.*

(n) *Ibid.*, ss. 3, 9, 13, 16; *ibid.*, 272, 277, 279, 281.

(o) *Ibid.*, s. 14; *ibid.*, 280; *Duncan v. Jones* (1887), 51 J. P. 631.

(p) *Ibid.*, s. 12; *ibid.*, 278.

(q) Poor Prisoners' Defence Act, 1930, s. 2; 23 Halsbury's Statutes 26.

(r) *Blake v. Beech* (1876), 1 Ex. D. 320; 33 Digest 354, 639.

(s) Summary Jurisdiction Act, 1848, s. 14; 11 Halsbury's Statutes 280.

(t) *Harker v. Hopkins* (1903), 67 J. P. 428; 33 Digest 318, 334.

(u) Summary Jurisdiction Act, 1879, s. 17 (1); 11 Halsbury's Statutes 329.

(a) Criminal Justice Act, 1925, s. 33 (5); *ibid.*, 416.

or admits the truth of the charge or information or complaint (b) ; and if he so pleads or admits he must be asked if he has any cause to show why he should not be convicted or why an order should not be made against him, as the case may be. If, however, the defendant does not plead guilty or admit the truth of the matter alleged the evidence for the prosecution is to be heard ; and if there is then a case to answer the defendant may make his reply, either upon oath or not as he prefers, and may call witnesses as to fact and as to character. Thereafter if the defendant shall have examined any witnesses or given any evidence other than as to his own good character the prosecution may call evidence on the facts in rebuttal, by leave of the court (c), although this should rarely be necessary in view of the comparatively simple issues usually to be tried in summary matters. Neither party may make any observations in reply to the evidence given by the other side ; but if a point of law should be raised by the defence the prosecution may reply upon that.

The prosecution must prove every ingredient of the offence alleged but need not disprove any exception, exemption, proviso, excuse or qualification, to an offence, whether specified in the information or not (d) ; and if the defendant wishes to have advantage of any such matter he must prove it. [770]

The Adjudication.—Having heard the case the court must consider the whole matter and determine it ; and must either convict or make an order, or dismiss the information or complaint (e).

The order to be made upon a complaint will be determined by the provisions of the statute under which the proceedings are taken.

Upon conviction for a summary offence the maximum punishment is prescribed by the relevant statute and is usually either a sentence of imprisonment or a fine, or (exceptionally) both. Where imprisonment only is prescribed there is a general power to mitigate the punishment to a fine, of an amount (within an overriding maximum of £25) which in default of payment will not render the defendant liable to a greater term of imprisonment than that originally prescribed by the relevant statute (f).

If a fine be imposed, not less than seven days' time to pay must be allowed in the absence of some special reason (g) ; and where time to pay is so allowed a term of imprisonment in default of payment must not be imposed at the time unless there be special circumstances (h).

A sentence of imprisonment without the option of a fine may be ordered to be with or without hard labour (i), and it must not be for less than five days ; but detention in police custody may be ordered for a shorter term (k).

Instead of punishing an offender whose offence is proved the court may, without proceeding to conviction, dismiss the charge, or may discharge the offender conditionally on entering into a recognisance, with or without sureties, to be of good behaviour and to appear for conviction

(b) Summary Jurisdiction Rules, 1915, r. 8. See Stone.

(c) *R. v. Knight and Rutty* (1897), 41 Sol. Jo. 276 ; 33 Digest 343, 540.

(d) Summary Jurisdiction Act, 1879, s. 39 (2) ; 11 Halsbury's Statutes 344.

(e) Summary Jurisdiction Act, 1848, s. 14 ; *ibid.*, 280.

(f) Summary Jurisdiction Act, 1879, s. 4 ; *ibid.*, 323.

(g) Criminal Justice Administration Act, 1914, s. 1 ; *ibid.*, 371.

(h) Money Payments (Justices Procedure) Act, 1985, s. 1 ; 25 & 26 Geo. 5, c. 46.

(i) Criminal Justice Administration Act, 1914, s. 16 ; 11 Halsbury's Statutes 379.

(k) *Ibid.*, ss. 12, 13 ; *ibid.*, 377.

and sentence when called upon within a specified period, which is not to exceed three years (*l*). During the period of the recognisance the offender may be placed under the supervision of some person specified in the order (*m*), and further conditions may be inserted in the recognisance as to the place of residence and other matters with a view to preventing any further lapse on the part of the offender (*n*). Also the offender may be ordered to pay costs, damages or compensation not exceeding twenty-five pounds or such higher limit as may be prescribed by the statute relating to the offence (*o*). [771]

Costs.—The court may in its discretion award just and reasonable costs to be paid by the defendant to a successful informant or complainant or upon dismissal the defendant may be allowed costs against the prosecutor (*p*). These costs must be fixed by the court and specified in the conviction or order, or in the order of dismissal ; there is no power to delegate to any other person the duty of fixing the amount of the costs (*q*).

Costs against a defendant who is ordered to pay a penalty or a sum of money are recoverable in the same manner and under the same warrants as the penalty or sum of money. If there be no penalty or sum of money to be recovered but the defendant is ordered to be imprisoned for an offence or for disobeying an order (other than for the payment of money) the costs may be recovered by distress and sale of defendant's goods ; or in default of that remedy the defendant may be ordered to be imprisoned for a period not exceeding one calendar month unless the costs be sooner paid (*s*).

Costs against a prosecutor upon dismissal of a case may be enforced only as a civil debt (*t*). [772]

Enforcement of Payment of Fine.—If time to pay a fine has been allowed the defendant must be given (or there must be sent to him) a notice in writing giving details of the amount of the fine and as to when and where it is to be paid ; and a similar notice must be sent to a defendant who is not present at the hearing, whether or not he has been allowed time (*u*). In default of payment, where the term of imprisonment in default of payment was not fixed at the hearing, at a subsequent date inquiry may be made into the means of the defendant in his presence, and thereafter the term may be fixed and a warrant of commitment issued (*a*).

Whether time to pay was given or not, payment may be enforced by distress (*b*), and the distress warrant may authorise the taking of money as well as goods (*c*). In default of distress or in lieu of distress

(*l*) Probation of Offenders Act, 1907, s. 1 (1) ; 11 Halsbury's Statutes 365.

(*m*) *Ibid.*, s. 2 (1) ; *ibid.*, 367.

(*n*) *Ibid.*, s. 2 (2) ; *ibid.*

(*o*) *Ibid.*, s. 1 (3) ; Criminal Justice Act, 1925, s. 7 (2) ; Criminal Justice (Amendment) Act, 1926, s. 1 (1) ; *ibid.*, 366.

(*p*) Summary Jurisdiction Act, 1848, s. 18 ; *ibid.*, 282. There are a few statutory exceptions under which a successful party may be ordered to pay costs.

(*q*) *R. v. Hants JJ.* (1862), 32 L. J. (M. C.) 46 ; 33 Digest 456, 1691.

(*s*) Summary Jurisdiction Act, 1848, s. 24 ; 11 Halsbury's Statutes 285.

(*t*) *R. v. London (Lord Mayor of)*, *Ex parte Boaler*, [1893] 2 Q. B. 146 ; 18 Digest 436, 1722.

(*u*) Money Payments (J.J. Procedure) Act, 1935, s. 3 ; 25 & 26 Geo. 5, c. 46.

(*a*) *Ibid.*, s. 1 ; 25 & 26 Geo. 5, c. 46.

(*b*) Criminal Justice Administration Act, 1914, s. 25 (2) ; 11 Halsbury's Statutes 381.

(*c*) *Ibid.*, s. 4 (2) ; *ibid.*, 373.

imprisonment may be ordered, but unless time to pay was given at the hearing the enforcement must be by distress in the first instance unless it appears that this course would be ineffective or undesirable (d).

Any person who receives payment of a fine or part thereof must pay over the amount forthwith to the clerk of the convicting court (e); and any part payment entitles the defendant to a proportionate reduction in any term of imprisonment to which he may be liable in default of payment (f). [773]

Enforcement of Order.—A minute of the order should be served on the defendant as soon as possible after the hearing; and it is necessary that such minute be served separately and before any warrant of distress or commitment be issued against the defendant for disobedience to the order (g).

If the order be for payment of a sum of money (not a civil debt) enforcement may be by distress, or in default or in lieu of distress by imprisonment, under the same conditions as in the case of a fine (h); and any payment secured thereby is to be paid over to the clerk of the court in the same way as payment in respect of a fine and will secure similar reduction of any term of imprisonment.

An order other than for the payment of money if not complied with may be enforced, in the absence of any prescribed mode, by imprisonment whilst in default for not exceeding two months; or by an order to pay a sum not exceeding £1 for each day in which there has been default, within a maximum of £20, which sum is enforceable as a civil debt (i). [774]

Civil Debts.—Where under any Act a sum of money claimed to be due is recoverable on complaint to a court of summary jurisdiction and not on information, that sum is to be deemed a civil debt and is to be recoverable summarily only in the manner specially authorised for the recovery of a civil debt; and any costs given to either party are to be similarly recoverable (j).

Particulars of the claim must be annexed to or embodied in the summons (k). The usual procedure for the making of an order upon complaint will apply, subject to the following modifications, namely :

- (1) a warrant of arrest may not be issued to apprehend any person who fails to appear to answer the complaint;
- (2) the order may not be enforced by imprisonment, in default of distress or otherwise, except upon proof that the debtor is or has been able to comply with the order, and has failed to do so; but if the court be satisfied that the failure is due to his wilful refusal or neglect it may commit him to prison for a period not exceeding six weeks unless the default be sooner remedied (l);

(d) Summary Jurisdiction Act, 1879, s. 21 (3), as substituted by Criminal Justice Administration Act, 1914, s. 25 (1); 11 Halsbury's Statutes 333.

(e) Summary Jurisdiction Rules, 1915, r. 21; see Stone.

(f) Criminal Justice Administration Act, 1914, s. 3; 11 Halsbury's Statutes 372.

(g) Summary Jurisdiction Act, 1848, s. 17; *ibid.*, 282.

(h) Criminal Justice Administration Act, 1914, ss. 25 (2), 4 (2); Summary Jurisdiction Act, 1879, s. 21 (3), as substituted by Criminal Justice Administration Act, 1914, s. 25 (1); *ibid.*, 333, 373, 381.

(i) Summary Jurisdiction Act, 1879, s. 34; *ibid.*, 342.

(j) *Ibid.*, s. 6; *ibid.*, 325.

(k) Summary Jurisdiction Rules, 1915, r. 36; see Stone.

(l) Summary Jurisdiction Act, 1879, s. 35; 11 Halsbury's Statutes 342.

- (3) Before the court proceeds to enforce by imprisonment a judgment summons must be served on the debtor, personally if possible, at least two clear days before the date of hearing (*m*) ; and if the debtor appears he may be examined upon oath as to his means (*n*) ;
- (4) a distress warrant need not be issued, although it may be granted at any time before, during, or after imprisonment (*o*) ;
- (5) a defendant may not be committed to prison twice for the same default in payment (*o*). . . .

Witnesses as to the debtor's means may be summoned and examined as in other summary matters. [775]

Process for Enforcing Convictions and Orders.—See "Drafting of Forms," *ante*, p. 470.

Formal convictions and orders need not be drawn up unless required for an appeal or some other legal purpose ; and if so required the forms set out in the Schedule to the Summary Jurisdiction Rules, 1915, are to be used, unless some other form is prescribed in a particular case. Although more than one justice may be necessary to constitute the convicting court it will be sufficient in any case if the formal conviction or order be signed and sealed by one justice (*p*) unless some prescribed form in a particular case requires the signature of two justices (*q*). Any one justice having the same jurisdiction as the justices who dealt with a case may issue any warrant of distress or commitment necessary to enforce the adjudication although he may not have been a member of the court (*r*). [776]

Recognisances.—A recognisance is an acknowledgment by a person (either as principal or as surety for the principal) that a named sum will be forfeit from him to the Crown in the event of a specified condition not being complied with by the principal.

Justices may order recognisances to be entered into by defendants, with or without sureties as they may think fit, for a number of matters, of which the principal are :

- (i.) for appearance at an adjourned hearing (*s*), or at every adjourned hearing (*t*) ;
- (ii.) to keep the peace and/or to be of good behaviour for a specified period (*u*) ;
- (iii.) to prosecute an appeal to quarter sessions (*a*) ; or to the High Court by way of case stated (*b*) ;
- (iv.) under the Probation of Offenders Act, 1907 (see *ante*, pp. 478, 479).

A recognisance conditioned for the appearance of a person before a court of summary jurisdiction, or for his doing some other matter or thing to be done in, to, or before such a court, or in a proceeding before

(*m*) Summary Jurisdiction Rules, 1915, rr. 37—40 ; see Stone.

(*n*) Summary Jurisdiction Act, 1879, s. 35 ; 11 Halsbury's Statutes 342.

(*o*) Debtors Act, 1869, s. 5 ; 1 Halsbury's Statutes 575.

(*p*) Summary Jurisdiction Rules, 1915, r. 58 ; see Stone.

(*q*) *Wing v. Epsom U.D.C.*, [1904] 1 K. B. 798 ; 36 Digest 237, 766.

(*r*) Summary Jurisdiction Act, 1848, s. 29 ; 11 Halsbury's Statutes 288.

(*s*) *Ibid.*, ss. 3, 9, 18, 16 ; *ibid.*, 273, 277, 279, 281.

(*t*) Criminal Justice Administration Act, 1914, s. 19 ; *ibid.*, 380.

(*u*) Summary Jurisdiction Act, 1879, s. 25 ; *ibid.*, 335.

(*a*) Summary Jurisdiction (Appeals) Act, 1933, s. 1 ; 26 Halsbury's Statutes 546.

(*b*) Summary Jurisdiction Act, 1857, s. 3 ; 11 Halsbury's Statutes 301.

such a court, may on non-compliance be declared forfeited by the court and payment may be enforced as if the amount due were a fine (c). A recognisance conditioned for good behaviour may be forfeited by a court of summary jurisdiction upon proof of conduct by the principal which is a breach of that condition (d); whilst a recognisance to keep the peace or not to do or commit some specified act may be estreated upon proof that the principal has been convicted of an offence which is a breach of the condition (e). A recognisance in respect of an appeal to quarter sessions or the High-Court will usually be enforceable by quarter sessions (f).

The officer in charge of a police station may allow a prisoner arrested without a warrant to be released on bail for his appearance at the police station at a later date or before justices (g).

A surety for the release of a person from custody may enter into a recognisance separately from his principal and either before or after the latter (h); and any recognisance ordered by a court of summary jurisdiction may be entered into before any such court or before any clerk of such a court or before a police officer in charge of a police station or not below the rank of inspector, or, if a party to the recognisance is in prison, before the governor of that prison (i).

A surety for appearance may surrender his principal and will then be discharged from his recognisance. A surety for good behaviour or to keep the peace, however, if he suspects his principal to have been guilty or to be about to be guilty of a breach of the condition, must lay an information before a justice for the jurisdiction within which the principal is believed to be or in which the court was held at which the recognisances were ordered to be entered into. Thereupon the justice may issue process to ensure the attendance of the principal, and may then order him to enter into a fresh recognisance or may deal with him as if he had failed to comply with such an order. In either case the original recognisance is to be discharged (k).

A married woman or a minor may be ordered to enter into a recognisance as principal; and a married woman with sufficient separate means or property may properly be accepted as a surety, for the test is whether the surety is a person from whom the amount due can be recovered in the event of the recognisance being estreated. Nevertheless the court may refuse to accept a "professional surety"; and it is undesirable that the solicitor for a defendant should be accepted as surety for him (l).

A recognisance is essentially a personal matter; nevertheless a corporation may enter into one where appropriate and necessary, as for instance in an appeal to the High Court by way of case stated from a decision of justices. The recognisance may then be entered into by a corporation aggregate by its agent duly appointed for the purpose by

(c) Summary Jurisdiction Act, 1879, s. 9 (1); 11 Halsbury's Statutes 326.

(d) *Ibid.*, s. 9 (2); Criminal Justice Act, 1925, s. 26 (1); *ibid.*, 326.

(e) Summary Jurisdiction Act, 1879, s. 9 (2); *ibid.*, 326.

(f) Summary Jurisdiction (Appeals) Act, 1933, s. 6; 26 Halsbury's Statutes 552; Summary Jurisdiction Act, 1857, s. 18; 11 Halsbury's Statutes 303.

(g) Summary Jurisdiction Act, 1879, s. 38, as substituted by Criminal Justice Administration Act, 1914, s. 22; Criminal Justice Act, 1925, s. 45; *ibid.*, 343.

(h) Criminal Justice Administration Act, 1914, s. 24; *ibid.*, 381.

(i) Summary Jurisdiction Act, 1879, s. 42; *ibid.*, 345.

(k) Criminal Justice Act, 1925, s. 26 (2); *ibid.*, 412.

(l) *R. v. Scott Jervis* (1876), *Times Newspaper*, Nov. 20.

the directors or other governing body (*m*) ; but the agent must enter into it "for and on behalf of" the corporation so as to bind the real party to the proceedings and its property, and not so as to bind himself personally and his own property (*n*). Where, however, the clerk to a council, being duly authorised under the P.H.A., 1875, sect. 259, took proceedings in his own name, it was held that as he was the true informant he could properly enter into his personal recognisance as an appellant by way of case stated against the decision of justices upon those proceedings (*o*). [777] . . .

Appeals.—See that title and the title JUSTICES OF THE PEACE.

There is no general right of appeal on fact against summary orders and any special right must be sought in the relevant statute.

In the case of offences a special right of appeal is sometimes given ; but there is now a general right of appeal to quarter sessions (*i*.¹) where the defendant has not pleaded guilty or admitted the truth of the information, either against conviction (*p*) or against dismissal or other order under the Probation of Offenders Act (*q*) ; and (*ii.*) where the defendant has pleaded guilty or admitted the truth of the information, against sentence (*r*).

There is a general right of appeal from any proceeding of a summary court either on a point of law or on the ground that the court has exceeded its jurisdiction, by way of case stated (*s*).

Proceedings of justices may also be questioned by the appropriate prerogative writs ; or where a justice refuses to do any act relating to his duties a rule may be applied for under the Justices Protection Act, 1848, sect. 5 (*t*). [778]

London.—The law in London is the same as elsewhere. The provisions of sect. 72 of the P.H. (London) Act, 1936 (*a*), enable certain matters as to sewers and drains to be dealt with by a single justice. [779]

(*m*) Law of Property Act, 1925, s. 74 (2) ; 15 Halsbury's Statutes 248 ; *Southern Counties Deposit Bank v. Boaler* (1895), 59 J. P. 536 ; 9 Digest 621, 4129.

(*n*) *Leyton U.D.C. v. Wilkinson*, [1927] 1 K. B. 853 ; 33 Digest 413, 1229.

(*o*) *Lawrence v. Martin*, [1928] 2 K. B. 454 ; Digest (Supp.).

(*p*) Criminal Justice Administration Act, 1914, s. 37(1) ; 11 Halsbury's Statutes 386.

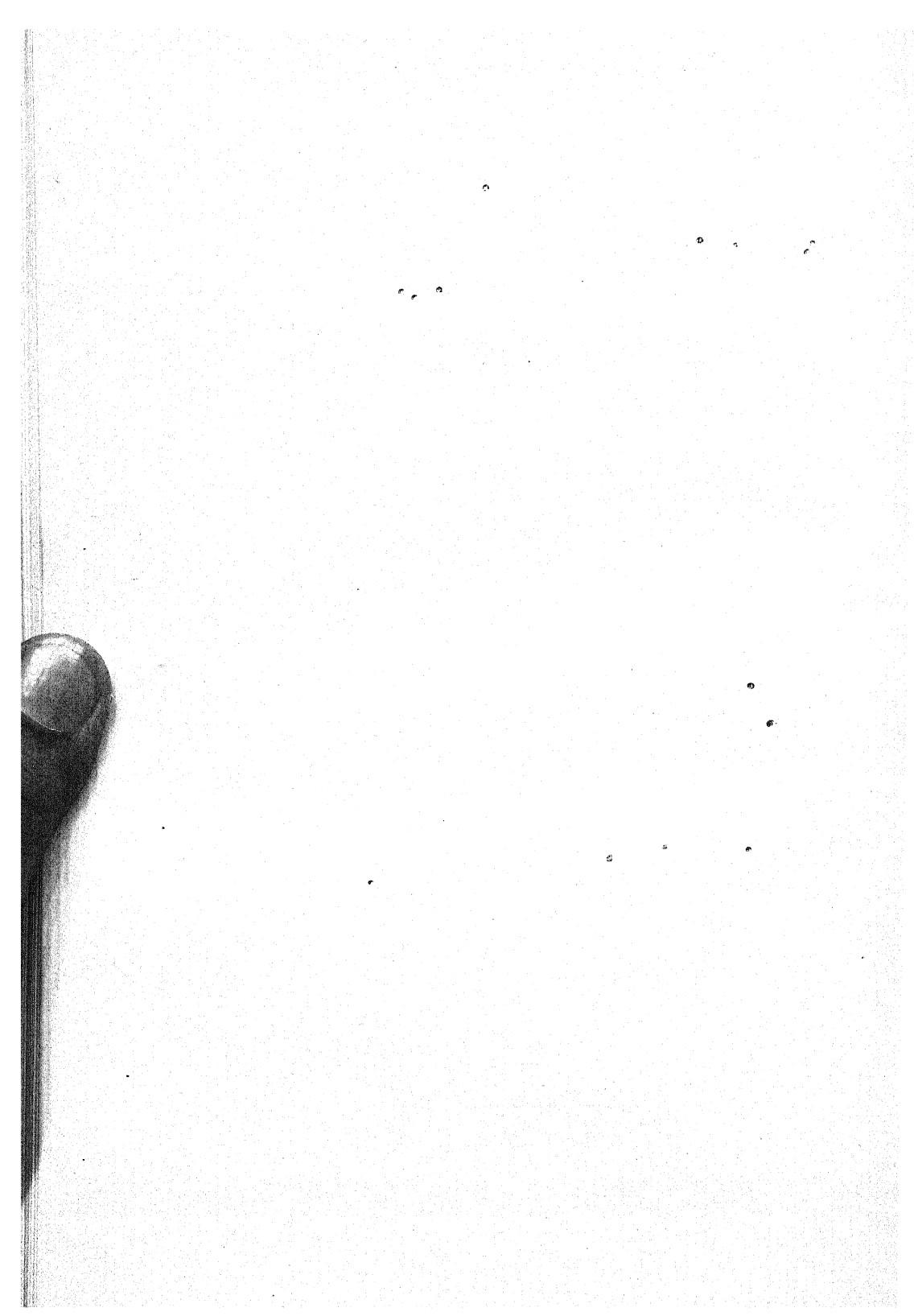
(*q*) Criminal Justice Act, 1925, s. 7 ; *ibid.*, 399.

(*r*) *Ibid.*, s. 25 ; *ibid.*, 412.

(*s*) Summary Jurisdiction Act, 1879, s. 33 ; *ibid.*, 341 ; Summary Jurisdiction Act, 1857, s. 2 ; *ibid.*, 300.

(*t*) 13 Halsbury's Statutes 452.

(*u*) 30 Halsbury's Statutes 484.



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